

Rogers, Laura

From: Tim Poxson [REDACTED]
Sent: Monday, July 16, 2007 2:25 PM
To: GetSMART
Cc: christine_leonard@judiciary-dem.senate.gov
Subject: OAG Docket No 121

Section 114 Part VI of the SONRA states in part; Each Jurisdiction an offender is a resident the offender must report immediately changes in vehicle information, lodging of seven days or more, changes in designations used for self- identification or routing information, internet communications or posting, or telephonic communications.

This requirement should give the offender 10 (ten) days to report changes. The real issue here is that sex offenders who are not going to re-offend will be in to change the information. However if an sex offender is offending is some way, they are not going to come in and tell the authorities they are offending and using xyz as their identifier. They are going to cover it up or just not report it. So although this rule looks good on paper its real effects will be no effect at all.

7/21/2007

Rogers, Laura

From: Tim Poxson [REDACTED]
Sent: Thursday, July 19, 2007 4:12 PM
To: GetSMART
Cc: christine_leonard@judiciary-dem.senate.gov
Subject: OAG Docket No 121

I will try to be as short as possible. I have some issue with the time lines you are giving sex offenders to do things.

Sec 113 (a) (b) and (c) a;sp sec. 117 (a) one says that change of address change of work or school must be reported within 3 days of making the change. This is not long enough and should be changed to ten (10) days. It is unreasonable to think that people can come in within 3 days of making such changes.

Must report immediately changes; changes in vehicles, E mail addresses and other communications, lodging of seven days or more. It is unreasonable and should be ten days. This will cause many to be in violation of the law if left like it is.

Sec 113 (a) provides that a sex offender must keep the registration current in each jurisdiction in which the sex offender resides, goes to school or works. This is unreasonable and should be accomplished by one of the locations contacting the others via the internet. This one will also cause many to be in violation if left like it is.

The 3 day requirement of above will also make law Enforcement work harder in that more offenders will be coming in to law enforcement in a short time frame causing them problems in getting this work done in 3 days. Ten days would spread the numbers of people coming in out over a longer time, giving law Enforcement more room to get this job done.

Section 114 Part VI again says each sex offender must report to each jurisdiction any change in address, autos, changes in designations used for self identification or routing internet or posting, or telephonic communications. This should be changed to reporting to just one jurisdiction, it is redundant to have the sex offender report to each jurisdiction the change. It will also cause for violations if left like it is. I understand the need to have this information for law Enforcement, but it should also be mandatory that each state can not post this information on the web sight were sex offenders information is posted. To do so will cause some to communicate with the offenders in a negative fashion. This posting of information such as the e mail address would also lead to sex offenders communicating. If someone from the public needs to check an e mail address, this request should be handled by them submitting a e mail address to be checked against the e mails that law enforcement has in its data base. This request should not be made in a manner that would give out an address unless the one submitted by the citizen does belong to a sex offender in the data base.

7/21/2007

Rosengarten, Clark

From: Rogers, Laura on behalf of GetSMART
Sent: Thursday, July 26, 2007 3:49 PM
To: Rosengarten, Clark
Subject: FW: OAG Docket No. 121

From: David Hess [REDACTED]
Sent: Wednesday, July 25, 2007 9:11 PM
To: GetSMART
Subject: OAG Docket No. 121

RE: OAG Docket No. 121

Thank you for this opportunity to comment on the proposed National Guidelines for Sex Offender Registration and Notification. I am a pastor in New York State and also the New York State Representative of SOhopeful International, a group which advocates for effective sex offender laws.

One of the primary purposes of the Adam Walsh Act (AWA) was to establish consistent and uniform sex offender registries in the various states. The Act specifies that states "shall" establish a 3 tier system which specifies different terms of registration and degrees of public notification for various offenders depending on the crime of conviction.

Unfortunately, the proposed guidelines give states license to ignore the tier system. The proposed guidelines state, "the Act generally constitutes a set of minimum national standards and sets a floor, not a ceiling, for jurisdictions' programs." **The purpose of the Act was not to set "minimum" standards but to set uniform and consistent standards in the various states.**

The Act was intended to address an inconsistent situation where a particular offender would be subject to a 10 year term of registration in one state and a lifetime registration in another. Under the Adam Walsh Act the offender was to be subject to the same length of registration no matter the state in which he resided. Not so under the proposed guidelines. Inconsistent systems of registration are allowed to continue. The proposed guidelines do not implement the Adam Walsh Act; they sabotage it.

The guidelines justify this approach by stating: "Such measures, which encompass the SORNA baseline of sex offender registration and notification requirements but go beyond them, generally have no negative implication concerning jurisdictions' implementation of or compliance with SORNA. This is so because the general purpose of SORNA is to protect the public from sex offenders and offenders against children through effective sex offender registration and notification, and it is not intended to preclude or limit jurisdictions' discretion to adopt more extensive or additional registration and notification requirements to that end."

It must be pointed out that going beyond the AWA requirements does have negative implications. These certainly include continuing a system of patchwork laws, but they also may have negative safety implications. This has been pointed out by respected experts in the field of sex offender management

7/26/2007

such as Andrew J. R. Harris and R. Karl Hanson (*Sex Offender Recidivism: A Simple Question*, 2004-03, Public Safety and Emergency Preparedness Canada):

The variation in recidivism rates suggests that not all sex offenders should be treated the same. Within the correctional literature it is well known that the most effective use of correctional resources targets truly high-risk offenders and applies lower levels of resources to lower risk offenders (Andrews & Bonta, 2003). The greater the assessed risk, the higher the levels of intervention and supervision; the lower the assessed risk, the lower the levels of intervention and supervision. **Research has even suggested that offenders may actually be made worse by the imposition of higher levels of treatment and supervision than is warranted given their risk level (emphasis mine) (Andrews & Bonta, 2003).** Consequently, blanket policies that treat all sexual offenders as "high risk" waste resources by over-supervising lower risk offenders and risk diverting resources from the truly high-risk offenders who could benefit from increased supervision and human service.

To allow jurisdictions to ignore the uniform guidelines in AWA also makes AWA more difficult to implement. For example, Section 113 states:

KEEPING THE REGISTRATION CURRENT.—A sex offender shall, not later than 3 business days after each change of name, residence, employment, or student status, appear in person in at least 1 jurisdiction involved pursuant to subsection (a) and inform that jurisdiction of all changes in the information required for that offender in the sex offender registry. **That jurisdiction shall immediately provide that information to all other jurisdictions in which the offender is required to register. (emphasis mine)**

An inconsistent implementation of AWA on the part of jurisdictions makes it extremely difficult and confusing for jurisdictions to know what other jurisdictions to notify since registration requirements would be allowed to vary greatly.

I urge you to eliminate this "floor, not a ceiling" language in the guidelines. A uniform and consistent implementation of the registration requirement are true to both the spirit and letter of the Adam Walsh Act.

Sincerely,

Rev. Dr. C. David Hess

[REDACTED]
[REDACTED]
[REDACTED]

Rosengarten, Clark

From: Rogers, Laura on behalf of GetSMART
Sent: Tuesday, July 31, 2007 10:53 AM
To: Rosengarten, Clark
Subject: FW: Docket No. OAG 121

From: [REDACTED]
Sent: Tuesday, July 31, 2007 10:47 AM
To: GetSMART
Subject: Docket No. OAG 121

Re: *Docket No. OAG 121*

The guidelines for the AWA should be a ceiling not a floor for the states anything other has a good chance of being deemed unconstitutional by the courts, I point to the narrative of the SCOTUS questions from the judges in the Alaska and Conn. cases.

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From: Rogers, Laura on behalf of GetSMART
nt: Monday, July 30, 2007 11:46 AM
Subject: Rosengarten, Clark
FW: Docket No. OAG 121
Attachments: 307788946-Bewig comments re Docket No. OAG 121.doc



Bewig comments re
Docket No. O...

-----Original Message-----

From: Matthew Bewig [REDACTED]
Sent: Sunday, July 29, 2007 8:06 PM
To: GetSMART
Subject: Docket No. OAG 121

Attached are my comments on the proposed regulations relating to SORNA.

Thank you,

Matt Bewig

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http://surveylink.yahoo.com/gmrs/yahoo_panel_invite.asp?a=7

29 July 2007

VIA ELECTRONIC AND FIRST CLASS MAIL

Laura L. Rogers
Director, SMART Office
Office of Justice Programs
United States Department of Justice
810 7th Street NW
Washington, DC 20531

Re: **OAG Docket No. 121**
Proposed National Guidelines for Sex Offender Registration and Notification

Introduction

These comments are directed toward Sections II.B., V, and XII of the proposed guidelines, set forth at the Federal Register, Vol. 72, No. 103, (May 30, 2007). For the reasons set forth below, I respectfully request that the guidelines be withdrawn so that they can be rewritten to be in conformance with the statute, the intent of Congress, and the weight of expert opinion.

Specifically, the proposed guidelines state that, among other provisions, the sex offender registration requirements set forth at Sections 112 to 118 of the Sex Offender Registration Notification Act (hereinafter "SORNA"), P. L. 109-248, 120 Stat. 587, establish "a set of minimum national standards and sets a floor, not a ceiling, for jurisdictions' programs. Hence, for example, a jurisdiction may . . . require sex offenders to register for longer periods than those required by the SORNA standards." 72 Fed. Reg. at 30212. This approach is reflected as well in Sections V and XII of the proposed guidelines. This "minimum standards" aspect of the proposed regulations contradicts the plain language of the referenced sections of SORNA, and hence ought not to be adopted, as this would violate a cardinal rule of administrative law that regulations must be in accordance with, and may not be inconsistent with, the text of the statute they purport to interpret or enforce. Furthermore, this approach is inconsistent with the clear intent of Congress and the weight of expert opinion presented to the Congress.

SORNA's Plain Language States that the Full Registration Periods are Maximums

First, the plain meaning of the statutory text of Sections 112 and 115 forecloses this "minimum standards" approach. Set forth below are relevant quotations of the statutory text (emphasis supplied):

"SEC. 112. REGISTRY REQUIREMENTS FOR JURISDICTIONS.

(a) JURISDICTION TO MAINTAIN A REGISTRY.—Each jurisdiction *shall maintain a* jurisdiction-wide sex offender registry conforming to the requirements of this title."

"SEC. 115. DURATION OF REGISTRATION REQUIREMENT.

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8/6/07

(a) FULL REGISTRATION PERIOD.—A sex offender shall keep the registration current for the *full registration period* (excluding any time the sex offender is in custody or civilly committed) unless the offender is allowed a reduction under subsection (b). The *full registration period* is—

- (1) 15 years, if the offender is a tier I sex offender;
 - (2) 25 years, if the offender is a tier II sex offender; and
 - (3) the life of the offender, if the offender is a tier III sex offender.
- (b) REDUCED PERIOD FOR CLEAN RECORD.—

(1) CLEAN RECORD.—The full registration period shall be reduced as described in paragraph (3) for a sex offender who maintains a clean record for the period described in paragraph (2) by—

(A) not being convicted of any offense for which imprisonment for more than 1 year may be imposed;

(B) not being convicted of any sex offense;

(C) successfully completing any periods of supervised release, probation, and parole; and

(D) successfully completing of an appropriate sex offender treatment program certified by a jurisdiction or by the Attorney General.

(2) PERIOD.—In the case of—

(A) a tier I sex offender, the period during which the clean record shall be maintained is 10 years; and

(B) a tier III sex offender adjudicated delinquent for the offense which required registration in a sex registry under this title, the period during which the clean record shall be maintained is 25 years.

(3) REDUCTION.—In the case of—

(A) a tier I sex offender, the reduction is 5 years;

(B) a tier III sex offender adjudicated delinquent, the reduction is from life to that period for which the clean record under paragraph (2) is maintained.”

The meaning of this text could not be plainer. Subtitle A of SORNA, comprising sections 111 through 131, establishes a comprehensive system of federal requirements for sex offender registries throughout the United States. Section 111 sets forth a set of carefully worded definitions for three “tiers” of offenders. Section 112, titled “REGISTRY REQUIREMENTS FOR JURISDICTIONS” mandates that each jurisdiction “shall maintain” a registry of offenders in conformity with SORNA or suffer the fiscal consequences set forth at Section 125. In using the word “shall,” Congress stated a mandate, a requirement, not an optional choice. Section 115 sets forth the “full registration period” as being fifteen years, twenty-five years, and life, for Tier I, II, and III offenders, respectively. No language appears in Subtitle A or elsewhere in the statute, either stating or implying that these registration periods are minimums or floors. Had Congress intended these “full registration periods” to be minimums, it would have explicitly stated so, or it would have used terminology such as “minimum registration period” or the like. Instead, Congress chose to use the word “full,” which, according to *Webster’s Unabridged Dictionary* (1996), means “containing all that possibly can be placed or put within,” and “having the normal or intended capacity supplied or accommodated : entirely occupied.” In other words, by the plain meaning of the statute, Congress intended these to be maximum terms of registration, not minimum terms. Indeed, it is hard to understand how the life registration requirement for Tier III offenders could be anything other than a maximum.

The mandatory nature of these “full registration periods” is further underscored by the terms of Section 115(b), which states that “[t]he full registration period shall be reduced as described

in paragraph (3) for a sex offender who maintains a clean record for the period described in paragraph (2) by” meeting certain criteria. Once again, Congress uses the term “full registration period,” with no qualifying language indicating that these are minimum periods of time, and mandates that these periods “shall be reduced” when the criteria are met.

Indeed, the structure of these statutorily mandated reductions makes sense only if the registration periods are maximums, and is unworkable under the regulations as currently written. Take the example of a Tier I offender who meets the “clean record” criteria of Section 115(b), but lives in a jurisdiction in which all sex offenders (regardless of Tier classification) are subject to lifetime registration—of which there are quite a number, and were at the time Congress passed the statute. A lifetime registration requirement cannot be reduced by five years because its indefinite nature renders any subtraction from its termination point logically impossible.

A fundamental rule of statutory construction—and of regulatory rulemaking pursuant to statute—is that the words of Congress must be interpreted in a way that gives them meaning and does not reduce them to a nullity. The only ways to give meaning to the terms of Section 115(b), especially with regard to Tier I offenders, are either to interpret the full registration periods as mandated maximums, or to assume that Congress meant the reductions to operate similarly for Tier I and Tier III offenders, so that just as the Tier III reduction shortens the registration period to the same length as the clean record period of 25 years, the Tier I reduction likewise shortens the registration period to ten years.

The Legislative History Indicates that the Full Registration Periods were to be Maximums

Furthermore, the legislative history of the statute demonstrates that Congress wrestled with the registration periods, and intended to create a nationally uniform sex offender registration system. For example, a key Senate report on the statute’s legislative history states that “[t]he Registry provisions were designed to establish uniform standards for the registration of sex offenders, including a lifetime registration requirement for the most serious offenders.” Activities Report of the Committee on the Judiciary, United States Senate, 2005–2006, Report 109–369, at 16. This report further states that “[i]n its original form, S. 1086 (the Senate antecedent to the Adam Walsh Act) was regarded by some Senate critics as too harsh in its requirements that states implement the provisions of a sex offender registry or face the loss of federal program funds. A similar concern was voiced regarding the bill’s treatment of lower level offenders.” *Id.* at 16. As to the first concern, Congress decided to relax the fiscal consequences of noncompliance—but not to remove the language requiring the states to comply with SORNA.

As to the latter issue, the relevant committees in both houses of Congress heard overwhelming testimony from experts in the field of sex offender recidivism and management that the best way to ensure public safety was to legislate shorter registration periods for low-risk offenders. For example, the Association for Treatment of Sexual Abusers, in written testimony submitted to the ranking Judiciary Committee members in both Houses, urged that “[l]ifetime registration . . . may in fact interfere with the stability of low risk offenders by limiting their employment and housing opportunities. Sex offenders represent a wide range of offense patterns and future risk. Research has found that community notification of low risk offenders may unnecessarily isolate them and lead to harassment and ostracism, which can inadvertently increasing their risk.” Letter from the ATSA Board of Directors, “Pending Sex Offender Registry Legislation (HR 3132, S 792, S 1086),” dated August 15, 2005. Based on these expert findings, ATSA

recommended that "sex offenders should be allowed to petition for release from registration when the sex offender is deemed to pose a low risk to the community AND the offender has successfully completed a sex offender treatment program AND the offender has been living in the community offense free for at least five years." *Id.*

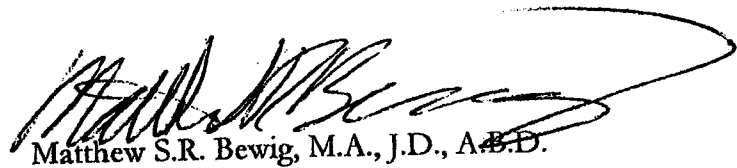
Congress's considered, and largely positive, response to ATSA's recommendations was at least twofold. First, Congress added the system of classification at Section 111 establishing three tiers of offenders, with three corresponding "full registration periods." Second, at Section 115(b), Congress explicitly adopted ATSA's proposal by legislating a means by which lower level offenders may be relieved of registration requirements by completing sex offender treatment and maintaining a clean record. Congress made this reduction available only to two classes of offenders—low level Tier I offenders, and some Tier III offenders adjudicated as juveniles. As indicated by the plain meaning of the statute and by the legislative history, Congress clearly intended to mandate a reduced registration period for these limited classes of offenders.

This legislative history, this careful deliberation on the part of the legislative branch of government, however, would be undermined by the proposed regulations, because they allow the states to ignore the three tier system, and even to render the indisputably mandatory registration period reduction provisions of Section 115(b) an unworkable nullity, as explained above. Regulations that frustrate the clear intent of the Congress are improper and ought not to be made final.

Conclusion

For the reasons set forth above, the Department should withdraw the proposed regulations. The Department should then rewrite the regulations in such a way as to give effect to the plain language and clear intent of Congress, specifically by recognizing the mandatory nature of the "full registration periods" and the registration period reduction provisions.

Respectfully submitted,


Matthew S.R. Bewig, M.A., J.D., A.B.D.



From: Rogers, Laura on behalf of GetSMART
Sent: Monday, August 06, 2007 10:49 AM
To: Rosengarten, Clark
Subject: FW: comments on DOJ "SMART" guidelines

-----Original Message-----

From: BelleAnne Curry
Sent: Tuesday, July 31, 2007 8:18 PM
To: GetSMART; christine_leonard@judiciary-dem.senate.gov
Subject: comments on DOJ "SMART" guidelines

Dear GetSMART@usdoj.gov and Ms. Christine Leonard:

One of the positive aspects of the Adam Walsh legislation - as written and signed into law - is that it provides a uniform code for sex-offender registries by specifying and defining with some specificity the three-tier classification of offenders by offense and number of offenses.

The guidelines proposed by the Department of Justice, if implemented, will negate the benefits of a national three-tier system by treating the states' registration laws as minimums. These published guidelines repeatedly make the point that the federal legislation is really just a minimum standard that the states are free to exceed. I do not understand how "guidelines" can so clearly contradict the legislation's language.

The patchwork quilt of state registration laws has resulted in big problems for law enforcement and low-risk offenders because so many state lawmakers are interested in being the first on the block to devise new ways to get tough on sex offenders. It is only natural for people to attempt to avoid the negative consequences of registration, and when laws differ from jurisdiction to jurisdiction, such avoidance is possible. When State A has 15-year registration and State B has lifetime registration - for the same offense - offenders will naturally be inclined to live in State A, and who can blame them? But then, State A discerns that offenders are moving in and changes its laws because it doesn't want to look like the weak sister. Pretty soon, your reasonable three-tier system is in shambles because every state requires lifetime registration. The result is actually decreased public safety, because you have low-risk offenders and high-risk offenders lumped together and the public will not take the registry seriously.

A simple reading of the legislation does not suggest that the classification system is intended as "a minimum." Do not try to make it such.

Rogers, Laura

Conviction

From: George and/or Barb [REDACTED]
Sent: Thursday, July 26, 2007 8:46 PM
To: GetSMART
Subject: OAG Docket No. 121

Dear Ms. Rogers,

I am writing concerning the interpretation of whether a person should have to register when they do not have a conviction on their record.

The language in the Adam Walsh Act (AWA) defines a "sex offender" as an "individual who was convicted of a sex offense." There are 2 caveats 1) the consensual exclusion, and 2) the 14 – 18 year old aggravated sexual abuse inclusion. The AWA, as written, does not include those without a conviction or adjudication on their record (with the exception of the 14-18 juvenile aggravated sexual abuse inclusion). It also does not say that someone who has been granted a set-aside of their conviction has to register. The AWA guidelines **Section IV – Convictions Generally, paragraph 3**, includes those whose offenses were vacated or set-aside but were required to serve what amounts to a criminal sentence for the offense.

Since the language in the AWA act does not specifically say these individuals should be included, it therefore appears that the intent was that those without a conviction or adjudication NOT be included in the definition of sex offender per the act. This would mean that each State could make the decision on how these individuals should be handled. In speaking with legislative aides prior to the enactment of the AWA there is no question that many people were led to believe that the intent was NOT to include those without a conviction.

Further support for the exclusion of those without a conviction or adjudication is found when comparing the language in the AWA and the Jacob Wetterling Act (JWA). The AWA makes use of the word convicted/conviction, without any explicit reference to including those without a conviction or adjudication. This terminology was also used in the Jacob Wetterling Act, but the JWA guidelines specifically allowed for the exclusion of those without a conviction. That was its intent, and that was how it was implemented, leaving discretion up to the states.

In addition, each state handles these kinds of programs (programs that keep a conviction off a person's record or allow for a set-aside) differently, so it would be inappropriate for the federal law to make assumptions on that, or apply a law broadly to that. It makes sense that it would be the individual states that need to make that decision on whether these individuals should be placed on their SOR or not. It's wrong to second-guess that state program, and its application, and broadly include them in the AWA. A judicious decision was made at some point, and respect should be given to that decision. These individuals should not be subject to the SORNA standards, but should be subject to the requirements of their own state. This is only right since a judicious decision was made for some valid reason which allowed them to participate in such a program, or be eligible to have a conviction set-aside.

Individuals that were given programs that didn't result in a conviction, or have been allowed to get a record set-aside, have had to meet the criteria for such programs. These programs are almost always determined by a judge, or with the judge's approval.

Please revise guidelines **Section IV – Convictions Generally, paragraph 3**, to exclude these individuals without a conviction or adjudication on their record, and leave that decision up to the individual states.

8/16/2007

Sincerely,
Barb Lambourne

[REDACTED]

8/16/2007

Rogers, Laura

conviction

From: [REDACTED]
Sent: Saturday, May 19, 2007 9:45 PM
To: GetSMART
Subject: Proposed Guidelines

I was wondering what is being done to protect children from offenders who have never been convicted, especially with the new trend of offenders pleading to lesser charges to avoid being placed on the sex offender registry.

In many more insulated Jewish communities it is frowned upon to report an offender to the "secular authorities." Instead rabbis tend to handle the cases on their own. Often chasing an offender out of town to unsuspecting new community. I know that this is not just happening in Jewish communities and is a problem that needs to be addressed.

Sincerely,
Vicki Polin, MA, ATR-BC, LCPC

*The Awareness Center, Inc.
(The Jewish Coalition Against Sexual Abuse/Assault)
P.O. Box 65273, Baltimore, MD 21209
www.theawarenesscenter.org
443-857-5560*

"An oak tree is just a nut that held its ground"

See what's free at <http://www.aol.com>.

8/16/2007

Rogers, Laura

convicted

From: [REDACTED]
Sent: Tuesday, June 26, 2007 11:52 AM
To: GetSMART
Cc: christine_leonard@40judiciary-dem.senate.gov
Subject: OAG Docket No 121

Below is a direct copy out of the rules the AG issued. Section IV (a)

This does not mean, however, that nominal changes or terminological variations that do not relieve a conviction of substantive effect negate the SORNA requirements. For example, the need to require registration would not be avoided by a jurisdiction's having a procedure under which the convictions of sex offenders in certain categories (e.g., young adult sex offenders who satisfy certain criteria) are referred to as something other than "convictions," or under which the convictions of such sex offenders may nominally be "vacated" or "set aside," but the sex offender is nevertheless required to serve what amounts to a criminal sentence for the offense. Rather, an adult sex offender is "convicted" for SORNA purposes if the sex offender remains subject to penal consequences based on the conviction, however it may be styled. Likewise, the sealing of a criminal record or other action that limits the publicity or availability of a conviction, but does not deprive it of continuing legal validity, does not change its status as a "conviction" for purposes of SORNA.

Problem: The problem I see with this is that if you read the section right before this one you will see that states may leave this type of offender off the SONRA. So this section starts out with conflict. I do think it should be mandatory that this type of status that an offender may get should be left off the SONRA. If they are included on the SONRA, the need for states to have this type of disposition of a case will be pointless. It will also make prosecution more difficult in many cases, as the defendant will not want to "plea bargain" a case knowing they will still end up on the public sex offender registry. Furthermore prosecution of this type of case or plea bargaining of this type of case would not be used in any aggravated situation. Also again this type of disposition is mainly used in Juvenile cases and all juvenile cases should be left off the SNORA unless a case involving a Juvenile defendant who is tried as an adult.

7/21/2007

Rogers, Laura

From: [REDACTED]
Sent: Thursday, July 12, 2007 11:23 AM
To: GetSMART
Cc: christine_leonard@judiciary-dem.senate.gov
Subject: OAG Docket No 121

The SNORA says in part that a person who's conviction is set aside by any means, and what ever the state calls it, that offender shall still be required to register and have their name on the SNORA. NO PUBLIC GOOD is served by requiring these offender to the conditions of the SNORA. If the court hearing the case and the prosecution trying the case had thought this offender was so bad that they should be given no opportunity to reform, the court or the prosecution would not agree to any provision that would set aside the conviction. The court maybe offering this as a way to get someone help because they feel that the case is so weak. But for what ever reason it is being offered by the court, if the SNORA still requires this offender to register, no offenders are going to want to take this deal. The SNORA will in essence cause some very weak cases that do go to trail to end up in no conviction at all and no help for the accused sex offender. This in turn may cause this offender to go out and commit another sex offense and maybe hurt or kill a child, that otherwise could have been saved had the sex offender been able to get help. Instead of saving a child the SNORA will be responsible for the hurt, injury or death of a child.

7/21/2007

Rogers, Laura

com.net.

From: Desiree Allen-Cruz [REDACTED]
Sent: Wednesday, July 25, 2007 9:37 PM
To: GetSMART
Cc: Desiree Allen-Cruz
Subject: Guideline Recommendation
Importance: High

We have reviewed the Proposed Guidelines and agree "Notification to Jurisdictions" need to be defined to the greatest extent possible. While we understand that larger more electronically advanced jurisdictions (state, fed) are likely to work closely and quickly, smaller jurisdictions such as rural or frontier areas within the state do not. And, as such, Tribal jurisdictions are not usually a priority especially when we reside in the rural or frontier areas. **Defining an agency within jurisdictions** (residential, school, employment) **that must give notification to ensure quick and reliable notification is important for the safety of our communities.**

Example: A sex offender currently a resident of Colorado employed with a construction company within that state, travels to Pendleton, Oregon for a construction project on our Reservation. Will the Colorado SO Registering office contact the state of Oregon? Or will the Colorado SO Registering office be contacting our Tribal agency? Will that notification reach the Tribal agency before the SO arrives or within 3 days after arrival? Or, will the SO Colorado employer have to notify our Tribal Law Enforcement or other Tribal agency upon or prior to arrival? Or will we have to bear the wait of Colorado State notifying Oregon or the Federal jurisdiction who will in turn contact our Tribe?

If racism prevails within jurisdictions (by agency or employee), defining the agency responsible to notify along with timelines is of utmost and imperative importance.

Please detail or further refine, within the proposed Guidelines, which agency within each jurisdiction that must notify which receiving agency of each jurisdiction and timeline for each.

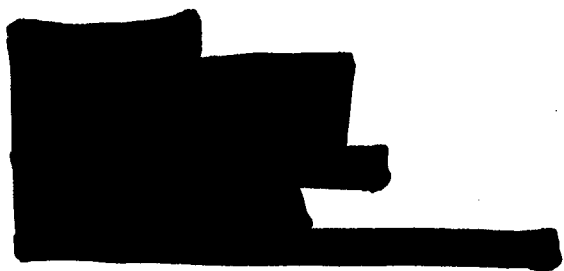
Folks in attendance and in agreement of above include:

Jessie Grow Hodges, Tribal Sexual Assault/Teen Advocate; Desiree Allen-Cruz, Domestic Violence Services Coordinator; Kate Beckwith, Tribal Prosecutor; Ron Harnden, Tribal Chief of Police.

Respectfully,

Desiree Allen-Cruz
CTUIR, Domestic Violence Services Coord.

8/16/2007



Rogers, Laura

dates

From: Tim [REDACTED]
Sent: Friday, July 27, 2007 1:12 PM
To: GetSMART
Subject: OAG Docket No 121

SONRA dates. In that the SONRA input to the get smart office is running behind schedule, the Important dates of the SONRA should be changed, so the OAG will have time to review all the comments sent in by the many who have e mail or mailed them in. To not back up the dates would send the wrong message. It would make people think that no matter what comments they sent in the get smart office of the A.G. had already made up it mind. I would think it would take 4 to 6 months to review all the comments and catalog them, and work on those issues that have been raised, with the first priority being the issues that draw the most input. July 27,2007 Date by which feerally recognized must elect to become a SORNA registration jurisdiction. The automatic delegation of duties to states for tribes not electing by July 27,2007. This date should be moved to Jan 1,2008.

July 27,2009 deadline for substantial implementation of SORNA for all registration jurisdictions. This date should be changed to July 27,2010 in that when the office of the get smart does review the input, time will now be needed to post any changes to the SORNA the get smart will recomend. The states will need time to adjust to the changes and write the changes in the laws they need to pass to become substantialy implemented.

April 27,2009 date to submit compliance packet to SMART office. This date should be changed to April 27,2010. Again so the states will have time to react to any changes that the A.G.s office may come out with as a result of the input.

8/16/2007

separate criminal charge for a violent offence, this offender can be scored for Index Non-sexual Violence when the accompanying sexual behaviour stands as the Index offence. Note: the evaluator should be sure that were this offender not already under sanction that it is highly likely that both a sexual offence charge and a violent offence charge would be laid by police.

Item # 4 – Prior Non-sexual Violence – Any Convictions

The Basic Principle: A meta-analytic review of the literature indicates that having a history of violence is a predictive factor for future violence. See Hanson and Bussière (1998), Table 2 – Item “Prior Violent Offences”. The presence of non-sexual violence predicts the seriousness of damage were a re-offence to occur and is strongly indicative of whether overt violence will occur (Hanson & Bussière, 1998). This item was included in the STATIC-99 because in the original samples this item demonstrated a small positive relationship with sexual recidivism (Hanson & Thornton, unpublished data).

In English data, convictions for prior non-sexual violence were specifically predictive of rape (forced sexual penetration) rather than all kinds of sexual offenses (Thornton & Travers, 1991). In some English data sets this item has also been predictive of reconviction for any sex offense. Sub-analyses of additional data sets confirm the relation of prior non-sexual violence and sexual recidivism (Hanson & Thornton, 2002).

Information Required to Score this Item: To score this item the evaluator must have access to an official criminal record as compiled by police, court, or correctional authorities. Self-report of criminal convictions may not be used to score this item except in specific rare situations, please see sub-section “Self-report and the STATIC-99” in the Introduction section.

The Basic Rule: If the offender’s criminal record shows a separate conviction for a non-sexual violent offence prior to the Index Offence, you score the offender a “1” on this item. If the offender’s criminal record does not show a separate conviction for a non-sexual violent offence prior to their Index Offence, you score the offender a “0” on this item.

This item refers to convictions for non-sexual violence that are dealt with on a sentencing occasion that pre-dates the Index sex offence sentencing occasion. A separate non-sexual violence conviction is required to score this item. These convictions can involve the same victim as the Index sex offence or they can involve a different victim, but the offender must have been convicted for this non-sexual violent offence before the sentencing date for the Index offence. All non-sexual violence convictions are included, providing they were dealt with on a sentencing occasion prior to the Index sex offence.

Both adult and juvenile convictions count in this section. In cases where a juvenile is not charged with a violent offence but is moved to a secure or more secure residential placement as the result of a non-sexually violent incident, this counts as a conviction for Non-sexual Violence.

Included are:

- Aggravated Assault
- Arson
- Assault
- Assault Causing Bodily Harm
- Assault Peace/Police Officer
- Attempted Abduction
- Attempted Robbery
- False Imprisonment
- Felonious Assault
- Forcible Confinement
- Give Noxious Substance (alcohol, narcotics, or other stupeficient in order to impair a victim)
- Grand Theft Person (“Grand Theft Person” is a variation on Robbery and may be counted as Non-sexual violence)
- Juvenile Non-sexual Violence convictions count on this item

- Kidnapping
- Murder
- “PINS” Petition (Person in need of supervision) There have been cases where a juvenile has been removed from his home by judicial action under a “PINS” petition due to violent actions. This would count as a conviction for Non-sexual violence.
- Robbery
- Threatening
- Using/pointing a weapon/firearm in the commission of an offence
- Violation of a Domestic Violence Order (Restraining Order) (a conviction for)
- Wounding

Note: If the conviction was “Battery” or “Assault” and the evaluator knew that there was a sexual component, this would count as a sexual offence and as a Non-sexual Violence offence.

Excluded are:

- Arrest/charges do not count
- Convictions overturned on appeal do not count
- Non-sexual violence that occurs after the Index offence does not count
- Institutional rules violations cannot count as Non-sexual Violence convictions
- Do not count driving accidents or convictions for Negligence causing Death or Injury

Weapons offences

Weapons offences do not count unless the weapon was used in the commission of a violent or a sexual offence. For example, an offender might be charged with a sexual offence and then in a search of the offenders home the police discover a loaded firearm. As a result, the offender is convicted, in addition to the sexual offence, of unsafe weapons storage. This would not count as a conviction for non-sexual violence as the weapons were not used in the commission of a violent or sexual offence.

A conviction for Possession of a firearm or Possession of a firearm without a licence would generally not count as a non-sexual violent offence. A conviction for Pointing a firearm would generally count as non-sexual violence as long as the weapon was used to threaten or gain victim compliance. Intent to harm or menace the victim with the weapon must be present in order to score a point on this item.

Resisting arrest

“Resisting Arrest” does not count as non-sexual violence. In Canadian law this charge could apply to individuals who run from an officer or who hold onto a lamppost to delay arrest. If an offender fights back he will generally be charged with “Assault a Peace/Police Officer” which would count as non-sexual violence.

Convictions that are coded as only “sexual”

- Sexual Assault, Sexual Assault with a Weapon, Aggravated Sexual Assault, and Sexual Assault Causing Bodily Harm are not coded separately as Non-sexual Violence – these convictions are simply coded as sexual
- Assault with Intent to Commit Rape (U.S. Charge) – A conviction under this charge is scored as only a sex offence – Do not code as Non-sexual Violence
- Convictions for “Sexual Battery” (U.S. Charge) – A conviction under this charge is scored as only a sex offence – Do not code as Non-sexual Violence

Situations where points are scored both for a "Sexual Offence" and a Non-sexual Violence offence

An offender may initially be charged with one count of sexual assault of a child but plea-bargains this down to one Forcible Confinement and one Physical Assault of a Child. In this instance, both offences would be considered sexual offences (they could be used as an "Index" offence or could be used as "priors" if appropriate) as well; a risk point would be given for non-sexual violence.

If you have an individual convicted of Kidnapping/Forcible Confinement (or a similar offence) and it is known, based on the balance of probabilities, this was a sexual offence - this offence may count as the "Index" offence or you may score this conviction as a sexual offence under Prior Sexual Offences, whichever is appropriate given the circumstances.

For Example

| Criminal Record for Joe Smith | | | |
|---|----------------------|----------------------|---|
| Date | Charge | Conviction | Sentence |
| July 2000 | Forcible Confinement | Forcible Confinement | 20 Months incarceration and 3 years probation |
| If the evaluator knows that the behaviour was sexual this conviction for Forcible Confinement would count as One Sexual Offence (either for "priors" or an "Index") and One Non-sexual Violence (either "prior" or "Index") | | | |

However, were you to see the following:

| Criminal Record for Joe Smith | | | |
|---|-------------------------|-------------------------|---|
| Date | Charge | Conviction | Sentence |
| July 2000 | 1) Forcible Confinement | 1) Forcible Confinement | 20 Months incarceration and 3 years probation |
| | 2) Sexual Assault | 2) Sexual Assault | |
| If the evaluator knows that the Forcible Confinement was part of the sexual offence this situation would count as Two Sexual Offences (either for "priors" or an "Index") and One Non-sexual Violence (either "prior" or "Index") | | | |

Military

If an "undesirable discharge" is given to a member of the military as the direct result of a violent offence (striking an officer, or the like) this would count as a Non-sexual Violence conviction and as a sentencing date (Item #6). However, if the member left the military when he normally would have and the "undesirable discharge" is equivalent to a bad job reference, this offence would not count as Non-sexual Violence or as a Sentencing Date.

Murder – With a sexual component

A sexual murderer who only gets convicted of murder would get one risk point for Non-sexual violence, but this murder would also count as a sexual offence.

Revocation of Conditional Release for "Lifers", Dangerous Offenders, and Others with Indeterminate Sentences

If a "lifer", Dangerous Offender, or other offender with an already imposed indeterminate sentence has been revoked (returned to prison from conditional release in the community without trial) for a Non-sexual Violent offence that happened prior to the Index sexual offence (or Index Cluster) this revocation can stand as a conviction for Non-sexual Violence if that non-sexually violent act were sufficient that it would generally attract a separate criminal charge for a violent offence. Note: the evaluator should be sure that were this offender not already under sanction that it is highly likely that a violent offence charge would be laid by police.

Item # 5 – Prior Sex Offences

The Basic Principle: This item and the others that relate to criminal history and the measurement of persistence of criminal activity are based on a firm foundation in the behavioural literature. As long ago as 1911 Thorndyke stated that the “the best predictor of future behaviour, is past behaviour”. Andrews & Bonta (2003) state that having a criminal history is one of the “Big Four” predictors of future criminal behaviour. More recently, and specific to sexual offenders, a meta-analytic review of the literature indicates that having prior sex offences is a predictive factor for sexual recidivism. See Hanson and Bussière (1998), Table 1 – Item “Prior Sex Offences”.

Information Required to Score this Item: To score this item you must have access to an official criminal record as compiled by police, court, or correctional authorities. Self-report of criminal convictions may not be used to score this item except in specific rare situations, please see sub-section “Self-report and the STATIC-99” in the Introduction section.

The Basic Rule: This is the only item in the STATIC-99 that is not scored on a simple “0” or “1” dichotomy. From the offender’s official criminal record, charges and convictions are summed separately. Charges that are not proceeded with or which do not result in a conviction are counted for this item. If the record you are reviewing only shows convictions, each conviction is also counted as a charge.

Charges and convictions are summed separately and these totals are then transferred to the chart below.

Note: For this item, arrests for a sexual offence are counted as “charges”.

| Prior Sexual Offences | | |
|-----------------------|-------------|-------------|
| Charges | Convictions | Final Score |
| None | None | 0 |
| 1-2 | 1 | 1 |
| 3-5 | 2-3 | 2 |
| 6+ | 4 | 3 |

Whichever column, charges or convictions, gives the offender the “higher” final score is the column that determines the final score. Examples are given later in this section.

This item is based on officially recorded institutional rules violations, probation, parole and conditional release violations, charges, and convictions. Only institutional rules violations, probation, parole, and conditional release violations, charges, and convictions of a sexual nature that occur **PRIOR** to the Index offence are included.

Do not count the Index Sexual Offence

The Index sexual offence charge(s) and conviction(s) are not counted, even when there are multiple offences and/or victims involved, and the offences occurred over a long period of time.

Count all sexual offences prior to the Index Offence

All pre-Index sexual charges and convictions are coded, even when they involve the same victim, or multiple counts of the same offence. For example, three charges for sexual assault involving the same victim would count as three separate charges. Remember, “counts count”. If an offender is charged with six counts of Invitation to Sexual Touching and is convicted of two counts you would score a “6” under

charges and a "2" under convictions. Convictions do not take priority over charges. If the record you are reviewing only shows convictions, each conviction is also counted as a charge.

Generally when an offender is arrested, they are initially charged with one or more criminal charges. However, these charges may change as the offender progresses through the criminal justice system. Occasionally, charges are dropped for a variety of legal reasons, or "pled down" to obtain a final plea bargain. As a basic rule, when calculating charges use the most recent charging document as your source of official charges.

In some cases a number of charges are laid by the police and as the court date approaches these charges are "pled-down" to fewer charges. When calculating charges and convictions you count the number of charges that go to court. In other cases an offender may be charged with a serious sexual offence (Aggravated Sexual Assault) and in the course of plea bargaining agrees to plead to two (or more) lesser charges (Assault). Once again, you count the charges that go to court and in a case like this the offender would score as having more charges than were originally laid by the police.

When scoring this item, counting charges and convictions, it is important to use an official criminal record. One incident can result in several charges or convictions. For example, an offender perpetrates a rape where he penetrates the victim once digitally and once with his penis while holding her in a room against her will. This may result in two convictions for Sexual Battery (Sexual Assault or equivalent) and one conviction of False Imprisonment (Forcible Confinement or equivalent). So long as it is known that the False Imprisonment was part of the sexual offence, the offender would be scored as having three (3) sexual charges, three (3) sexual convictions and an additional risk point for a conviction of Non-sexual Violence [the False Imprisonment] (Either "Index" {Item #3} or "Prior" {Item #4} as appropriate).

Probation, Parole and Conditional Release Violations

If an offender violates probation, parole, or conditional release with a sexual misbehaviour, these violations are counted as one charge.

If the offender violates probation or parole on more than one occasion, within a given probation or parole period, each separate occasion of a sexual misbehaviour violation is counted as one charge. For example, a parole violation for indecent exposure in July would count as one charge. If the offender had another parole violation in November for possession of child pornography, it would be coded as a second charge.

Multiple probation, parole and conditional release violations for sexual misbehaviours laid at the same time are coded as one charge. Even though the offender may have violated several conditions of parole during one parole period, it is only counted as one charge, even if there were multiple sex violations.

The following is an example of counting charges and convictions.

| Criminal History for John Jack | | | |
|---------------------------------------|--|--|-----------------|
| Date | Charges | Convictions | Sanction |
| July 1996 | Lewd and Lascivious with Child (X3) Sodomy Oral Copulation Burglary | Lewd and Lascivious with Child (X3) Sodomy (dismissed) Oral Copulation (dismissed) Burglary (dismissed) | 3 Years |
| May 2001 | Sexual Assault on a Child | | |

To determine the number of Prior Sex Offences you first exclude the Index Offence. In the above case, the May 2001 charge of Sexual Assault on a Child is the Index Offence. After excluding the May 2001

charge, you sum all remaining sexual offence charges. In this case you would sum, {Lewd and Lascivious with Child (X3), Sodomy (X1), and Oral Copulation (X1)} for a total of five (5) previous Sex Offence charges. You then sum the number of Prior Sex Offence convictions. In this case, there are three convictions for Lewd and Lascivious with Child. These two sums are then moved to the scoring chart shown below. The offender has five prior charges and three prior convictions for sexual offences. Looking at the chart below, the evaluator reads across the chart that indicates a final score for this item of two (2).

| Prior Sexual Offences | | |
|-----------------------|-------------|-------------|
| Charges | Convictions | Final Score |
| None | None | 0 |
| 1-2 | 1 | 1 |
| 3-5 | 2-3 | 2 |
| 6+ | 4 | 3 |

Charges and Convictions are counted separately – the column that gives the higher final score is the column that scores the item. It is possible to have six (6+) or more charges for a sexual offence and no convictions. Were this to happen, the offender's final score would be a three (3) for this item.

Acquittals

Acquittals count as charges and can be used as the Index Offence. The reason that acquittals are scored this way is based upon a research study completed in England that found that men acquitted of rape are more likely to be convicted of sexual offences in the follow-up period than men who had been found guilty {with equal times at risk} (Soothill et al., 1980).

Note: Acquittals do not count for Item #6 – Prior Sentencing Dates.

Adjudication Withheld

In some jurisdictions it is possible to attract a finding of "Adjudication Withheld", in which case the offender receives a probation-like period of supervision. This is counted as a conviction because a sentence was given.

Appeals

If an offender is convicted and the conviction is later overturned on appeal, code as one charge.

Arrests Count

In some instances, the offender has been arrested for a sexual offence, questioning takes place but no formal charges are filed. If the offender is arrested for a sexual offence and no formal charges are filed, a "1" is coded under charges, and a "0" is coded under convictions. If the offender is arrested and one or more formal charges are filed, the total number of charges is coded, even when no conviction ensues.

Coding "Crime Sprees"

Occasionally, an evaluator may have to score the STATIC-99 on an offender who has been caught at the end of a long line of offences. For example, over a 20-day period an offender breaks into 5 homes, each of which is the home of an elderly female living alone. One he rapes, one he attempts to rape but she gets away, and three more get away, one with a physical struggle (he grabs her wrists, tells her to shut up). The offender is subsequently charged with Sexual Assault, Attempted Sexual Assault, B & E with Intent (X2), and an Assault. The question is, do all the charges count as sexual offences, or just the two charges

that are clearly sexual? Or, does the evaluator score the two sex charges as sex charges and the assault charges as Non-sexual Violence?

In cases such as this, code all 5 offences as sex offences - based upon the following thinking:

- 1) From the evidence presented this appears to be a "focused" crime spree – We assume the evaluator has little doubt what would have happened had the women not escaped or fought back.
- 2) Our opinion of "focus" is reinforced by the exclusive nature of the victim group, "elderly females". This offender appears to want something specific, and, the very short time span - 20 days – leads us to believe that the offender was feeling some sexual or psychological pressure to offend.
- 3) An attempted contact sex offence is scored as a contact sex offence for the purposes of the STATIC-99. Charges such as Attempted Sexual Assault (Rape) and Invitation to Sexual Touching are coded as contact sex offences due to their intention.
- 4) We recommend that if the evaluator "based on the balance of probabilities" (not "beyond a reasonable doubt") - is convinced that sex offences were about to occur that these actions can be counted as sex offences.
- 5) Please also read sub-section "Similar Fact Crimes" in the "Definitions" section.

Conditional Discharges

Where an offender has been charged with a sexual offence and receives a Conditional Discharge, for the purposes of the STATIC-99 a conditional discharge counts as a conviction and a sentencing date.

Consent Decree

Where applicable, "Consent Decree" counts as a conviction and a sentencing date.

Court Supervision

In some states it is possible to receive a sentence of Court Supervision, where the court provides some degree of minimal supervision for a period (one year), this is similar to probation and counts as a conviction.

Detection by Child Protection Officials

Being "detected" by the Children's Aid Society or other Child Protection Services does not count as an official sanction; it may not stand as a charge or a conviction.

Extension of Sentence by a Parole Board (or similar)

In some jurisdictions Parole Boards (or similar) have the power to extend the maximum period of incarceration beyond that determined by the court. If an offender is assigned extra time, added to their sentence, by a parole board for a sexual criminal offence this counts as an additional sexual charge and conviction. The new additional period of incarceration must extend the total sentence and must be for sexual misbehaviour. This would not count as a sexual conviction if the additional time was to be served concurrently or if it only changed the parole eligibility date. This situation is not presently possible in Canada.

Giving Alcohol to a Minor

The charge of Giving Alcohol to a Minor (or it's equivalent, drugs, alcohol, noxious substance, or other stupeficient) – can count as a sexual offence (both charge and conviction) if the substance was given with the intention of making it easier to commit a sexual offence. If there were evidence the alcohol (or substance) was given to the victim just prior to the sexual assault, this would count as a sexual offence. If

there is no evidence about what went on, or the temporal sequence of events, the substance charge would not count as a sexual offence.

Institutional Disciplinary Reports

Institutional Disciplinary Reports for sexual misbehaviours that would likely result in a charge were the offender not already in custody count as charges. In a prison environment it is important to distinguish between targeted activity and non-targeted activity. Institutional disciplinary reports that result from an offender who specifically chooses a female guard and masturbates in front of her, where she is the obvious and intended target of the act would count as a "charge" and hence, could stand as an Index offence. The alternative situation is where an offender who is masturbating in his cell and is discovered by a female employee and she is not an obvious and intended target. In some jurisdictions this would lead to a Disciplinary Report. Violations of this "non-targeted" nature do not count as a "charge" and could not stand as an Index offence. If you have insufficient information to distinguish between these two types of occurrences the offender gets the benefit of the doubt and you do not score the occurrence.

An example of a behaviour that might get an inmate a disciplinary charge, but would not be used as a charge for scoring the STATIC-99, includes the inmate who writes an unwanted love letter to a female staff. The letter does not contain sexual content to the extent that the offender could be charged. Incidents of this nature do not count as a charge.

Prison misconducts for sexual misbehaviours count as one charge per sentence, even when there are multiple incidents. The reason for this is that in some jurisdictions the threshold for misconducts is very low. Often, as previously described, misconduct will involve a female guard simply looking into a cell and observing an inmate masturbating. Even in prison, serious sexual offences, rape and attempted rape will generally attract official criminal charges.

Juvenile Offences

Both adult and juvenile charges and convictions count when scoring this item. In cases where a juvenile was not charged with a sexual offence but was moved to a secure or more secure residential placement as the result of a sexual incident, this counts as a charge and a conviction for the purposes of scoring Prior Sex Offences.

Juvenile Petitions

In some states, it is impossible for a juvenile offender to get a "conviction". Instead, the law uses the wording that a juvenile "petition is sustained" (or any such wording). For the purposes of scoring the STATIC-99 this is equivalent to an adult conviction because there are generally liberty-restricting consequences. Any of these local legal wordings can be construed as convictions if they would be convictions were that term available.

Military

For members of the military, a discharge from service as a result of sexual crimes would count as a charge and a conviction.

If an "undesirable discharge" were given to a member of the military as the direct result of a sexual offence, this would count as a sexual conviction and as a sentencing date (Item #6). However, if the member left the military when he normally would have, and the "undesirable discharge" is the equivalent to a bad job reference, the undesirable discharge would not count as a sexual offence or as a Sentencing Date (Item #6).

Military Courts Martial

If an offender is given a sanction (Military Brig or it's equivalent) for a criminal offence, rather than a purely military offence {failure of duty}, these offences count, both charges and convictions, when scoring the STATIC-99. If the charges are sexual they count as sexual offences and if violent, they count as violent offences. These offences also count as sentencing dates (Item #6). Pure Military Offences {Conduct Unbecoming, Insubordination, Not following a lawful order, Dereliction of Duty, etc.} do not count when scoring the STATIC-99.

Noxious Substance

The charge of Giving A Noxious Substance (or it's equivalent, drugs, alcohol, or other stupeficient) – can count as a sexual offence (both charge and conviction) if the substance was given with the intention of making it easier to commit the sexual offence. If there were evidence the substance was given to the victim just prior to the sexual assault, this would count as a sexual offence. If there is no evidence about what went on, or the temporal sequence of events, the substance charge would not count as a sexual offence.

Not Guilty

Being found "Not Guilty" can count as charges and can be used as the Index Offence. Note: This is not the case for Item #6, "Prior Sentencing Dates", where being found "Not Guilty" is not counted as a Prior Sentencing Date.

Official Cautions – United Kingdom

In the United Kingdom, an official caution should be treated as equivalent to a charge and a conviction.

Official Diversions

Official diversions are scored as equivalent to a charge and a conviction (Restorative Justice, Reparations, Family Group Conferencing, Community Sentencing Circles).

Peace Bonds, Judicial Restraint Orders and "810" Orders

In some instances a Peace Bond/Judicial Restraint Order/810 Orders are placed on an offender when sexual charges are dropped or dismissed or when an offender leaves jail or prison. Orders of this nature, primarily preventative, **are not counted** as charges or convictions for the purposes of scoring the STATIC-99.

"PINS" Petition (Person in need of supervision)

There have been cases where a juvenile has been removed from his home by judicial action under a "PINS" petition due to sexual aggression. This would count as a charge and a conviction for a sexual offence.

Priests and Ministers

For members of a religious group (Clergy and similar professions) some disciplinary or administrative actions within their own organization can count as a charge and a conviction. The offender has to receive some form of official sanction in order for it to count as a conviction. An example of an official sanction would be removal from a parish for a priest or minister under the following circumstances.

If the receiving institution knows they are being sent a sex offender and considers it part of their mandate to address the offender's problem or attempt to help, this would function as equivalent to being sent to a

correctional institution and would count as a charge and a conviction. A conviction of this nature may stand as an Index offence.

Allegations that result in a "within-organization" disciplinary move or a move designed to explicitly address the offenders problems would be counted as a charge and a conviction. A conviction of this nature may stand as an Index offence.

Being transferred to a new parish or being given an administrative posting away from the public with no formal sanction or being sent to graduate school for re-training would not count as a charge or conviction.

Where a priest/minister is transferred between parishes due to allegations of sexual abuse but there is no explicit internal sanction; these moves would not count as charges or convictions.

Prison Misconducts for Sexual Misbehaviours Count as One Charge per Sentence

Prison misconducts for sexual misbehaviours count as one charge per sentence, even when there are multiple incidents. The reason for this is that in some jurisdictions the threshold for misconducts is very low. Often, as previously described, misconduct will involve a female guard simply looking into a cell and observing an inmate masturbating. Even in prison, serious sexual offences, rape and attempted rape will generally attract official criminal charges.

Post-Index Offences

Offences that occur after the Index offence do not count for STATIC-99 purposes. Post-Index sexual offences create a new Index offence. Post-Index violent offences should be considered "external" risk factors and would be included separately in any report about the offender's behaviour.

For Example, Post-Index Sexual Offences: Consider a case where an offender commits a sexual offence, is apprehended, charged, and released on bail. You are assigned to evaluate this offender but before you can complete your evaluation he commits another sexual offence, is apprehended and charged. Because the offender was apprehended, charged, and released this does not qualify as a crime "spree". He chose to re-offend in spite of knowing that he was under legal sanction. These new charges and possible eventual convictions would be considered separate crimes. In a situation of this nature the new charges would create a new sexual offence and become the new Index offence. If these charges happened to be the last sexual offences on the offender's record – the most recent charges would become the Index and the charge on which he was first released on bail would become a "Prior" Sexual Offence.

For Example, Post-Index Violent Offences: Consider a case where an offender in prison on a sexual offence commits and is convicted of a serious violent offence. This violent offence would not be scored on either Item #3 (Index Non-sexual Violence convictions) or Item #4 (Prior Non-sexual Violence convictions) but would be referred to separately, outside the context of the STATIC-99 assessment, in any subsequent report on the offender.

Probation before Judgement

Where applicable, "Probation before judgment" counts as a charge, conviction, and a sentencing date.

Revocation of Conditional Release for "Lifers", Dangerous Offenders, and Others with Indeterminate Sentences

If a "lifer", Dangerous Offender, or other offender with an already imposed indeterminate sentence is simply revoked (returned to prison from conditional release in the community without trial) for a sexual behaviour that is of sufficient gravity that a person not already involved with the criminal justice system would most likely be charged with a sexual criminal offence, this revocation of conditional release would

count as both a Prior Sex Offence "charge" and a Prior Sex Offence "conviction". Note: the evaluator should be sure that were this offender not already under sanction that it is highly likely that a sexual offence charge would be laid by police. Revocations for violations of conditional release conditions, so called "technicals" (drinking violations, failure to report, being in the presence of minors, being in the possession of legally obtained pornography) are insufficient to stand as Prior Sentencing Dates.

RRASOR and STATIC-99 – Differences in Scoring

Historical offences are scored differently between the RRASOR and the STATIC-99. On the RRASOR, if the offender is charged or convicted of historical offences committed prior to the Index Offence, these are counted as Prior Sexual Offences (User Report, The Development of a Brief Actuarial Risk Scale for Sexual Offense Recidivism 1997-04, Pg. 27, end of paragraph titled Prior Sexual Offences). This is not the case for the STATIC-99. For the STATIC-99, if the offender is charged or convicted of historical offences after the offender is charged or convicted of a more recent offence, these offences are to be considered part of the Index Offence (pseudo-recidivism) – forming an "Index Cluster".

Suspended Sentences

Suspended sentences should be treated as equivalent to a charge and a conviction.

Teachers

Being transferred to a new school or being given an administrative posting away from the public with no formal sanction or being sent to graduate school for re-training would not count as a charge or conviction.

Where a teacher is transferred between schools due to allegations of sexual abuse but there is no explicit internal sanction; these moves would not count as charges or convictions.

Item # 6 Prior Sentencing Dates

The Basic Principle: This item and the others that relate to criminal history and the measurement of persistence of criminal activity are based on a firm foundation in the behavioural literature. As long ago as 1911 Thorndyke stated that the “the best predictor of future behaviour, is past behaviour”. Andrews & Bonta (2003) state that having a criminal history is one of the “Big Four” predictors of future criminal behaviour. Prior Sentencing Dates is a convenient method of coding the length of the criminal record.

Information Required to Score this Item: To score this item you must have access to an official criminal record as compiled by police, court, or correctional authorities. Self-report of criminal convictions may not be used to score this item except in specific rare situations, please see sub-section “Self-report and the STATIC-99 in the Introduction section.

The Basic Rule: If the offender’s criminal record indicates four or more separate sentencing dates prior to the Index Offence, the offender is scored a “1” on this item. If the offender’s criminal record indicates three or fewer separate sentencing dates prior to the Index Offence, the offender scores a “0” on this item.

Count the number of distinct occasions on which the offender was sentenced for criminal offences. The number of charges/convictions does not matter, only the number of sentencing dates. Court appearances that resulted in complete acquittal are not counted, nor are convictions overturned over on appeal. The Index sentencing date is not included when counting up the sentencing dates.

If the offender is on some form of conditional release (parole/probation/bail etc.) “technical” violations do not count as new sentencing dates. For example, if an offender had a condition prohibiting drinking alcohol, a breach for this would not be counted as a new sentencing date. To be counted as a new sentencing date, the breach of conditions would have to be a new offence for which the offender could be charged if he were not already under criminal justice sanction.

Institutional rule violations do not count, even when the offence was for behaviour that could have resulted in a legal sanction if the offender had not already been incarcerated.

Count:

- Juvenile offences count (if you know about them – please see section on the use of self-report in the Introduction)
- Where applicable “Probation before judgment” counts as a conviction and a sentencing date
- Where applicable “Consent Decree” counts as a conviction and a sentencing date
- Suspended Sentences count as a sentencing date

Do Not Count:

- Stayed offences do not count as sentencing dates
- Institutional Disciplinary Actions/Reports do not count as sentencing dates

The offences must be of a minimum level of seriousness. The offences need not result in a serious sanction (the offender could have been fined), but the offence must be serious enough to permit a sentence of community supervision or custody/incarceration (as a juvenile or adult). Driving offences generally do not count, unless they are associated with serious penalties, such as driving while intoxicated or reckless driving causing death or injury.

Generally, most offences that would be recorded on an official criminal history would count – but the statute, as written in the jurisdiction where the offence took place, must allow for the imposition of a custodial sentence or a period of community supervision (adult or juvenile). Only truly trivial offences

are excluded; those where it is impossible to get a period of incarceration or community supervision. Offences that can **only** result in fines do not count.

Sentences for historical offences received while the offender is incarcerated for a more recent offence (pseudo-recidivism), are not counted. For two offences to be considered separate offences, the second offence must have been committed after the offender was sanctioned for the first offence.

Offence convictions occurring after the Index offence cannot be counted on this item.

Conditional Discharges

Where an offender has been charged with a sexual offence and receives a Conditional Discharge, for the purposes of the STATIC-99 a conditional discharge counts as a conviction and a sentencing date.

Diversionsary Adjudication

If a person commits a criminal offence as a juvenile or as an adult and receives a diversionary adjudication, this counts as a sentencing date (Restorative Justice, Reparations, Family Group Conferencing, Community Sentencing Circles).

Extension of Sentence by a Parole Board (or similar)

If an offender is assigned extra time added to their sentence by a parole board for a criminal offence this counts as an additional sentencing date if the new time extended the total sentence. This would not count as a sentencing date if the additional time was to be served concurrently or if it only changed the parole eligibility date. This situation is presently not possible in Canada.

Failure to Appear

If an offender fails to appear for sentencing, this is not counted as a sentencing date. Only the final sentencing for the charge for which the offender missed the sentencing date is counted as a sentencing date.

Failure to Register as a Sexual Offender

If an offender receives a formal legal sanction, having been convicted of Failing to Register as a Sexual Offender, this conviction would count as a sentencing date. However, it should be noted that charges and convictions for Failure to Register as a Sexual Offender are not counted as sexual offences.

Juvenile Extension of Detention

In some states it is possible for a juvenile to be sentenced to a Detention/Treatment facility. At the end of that term of incarceration it is possible to extend the period of detention. Even though a Judge and a prosecutor are present at the proceedings, because there has been no new crime or charges/convictions, the extension of the original order is not considered a sentencing date.

Juvenile Offences

Both adult and juvenile convictions count in this item. In the case where a juvenile is not charged with a sexual or violent offence but is moved to a secure or more secure residential placement as the result of a sexual or violent incident, this counts as a sentencing date for the purposes of scoring Prior Sentencing Dates.

Military

If an "undesirable discharge" is given to a member of the military as the direct result of criminal behaviour (something that would have attracted a criminal charge were the offender not in the military),

this would count as a sentencing date. However, if the member left the military when he normally would have and the "undesirable discharge" is the equivalent to a bad job reference then the criminal behaviour would not count as a Sentencing Date.

Military Courts Martial

If an offender is given a sanction (Military Brig or it's equivalent) for a criminal offence rather than a purely military offence {failure of duty} this counts as a sentencing date. Pure Military Offences {Insubordination, Not Following a Lawful Order, Dereliction of Duty, Conduct Unbecoming, etc.} do not count as Prior Sentencing Dates.

Not Guilty

Being found "Not Guilty" is not counted as a Prior Sentencing Date.

Official Cautions – United Kingdom

In the United Kingdom, an official caution should be treated as equivalent to a sentencing date.

Post-Index Offences

Post-Index offences are not counted as sentencing occasions for the STATIC-99.

Revocation of Conditional Release for "Lifers", Dangerous Offenders, and Others with Indeterminate Sentences

If a "lifer", Dangerous Offender, or other offender with an already imposed indeterminate sentence is simply revoked (returned to prison from conditional release in the community without trial) for criminal behaviour that is of sufficient gravity that a person not already involved with the criminal justice system would most likely be charged with a criminal offence, this revocation of conditional release would count as a Prior Sentencing Date. Note: the evaluator should be sure that were this offender not already under sanction that a criminal charge would be laid by police and that a conviction would be highly likely. Revocations for violations of conditional release conditions, so called "technicals", (drinking violations, failure to report, being in the presence of minors) are insufficient to stand as Prior Sentencing Dates.

Note: for this item there have been some changes to the rules from previous versions. Some rules were originally written to apply to a specific jurisdiction. Over time, and in consultation with other jurisdictions the rules have been generalized to make them applicable across jurisdictions in a way that preserves the original intent of the item.

Suspended Sentences

Suspended sentences count as a sentencing date.

Item # 7 - Any Convictions for Non-contact Sex Offences

The Basic Principle: Offenders with paraphilic interests are at increased risk for sexual recidivism. For example, most individuals have little interest in exposing their genitals to strangers or stealing underwear. Offenders who engage in these types of behaviours are more likely to have problems conforming their sexual behaviour to conventional standards than offenders who have no interest in paraphilic activities.

Information Required to Score this Item: To score this item you must have access to an official criminal record as compiled by police, court, or correctional authorities. Self-report of criminal convictions may not be used to score this item except in specific rare situations, please see sub-section "Self-report and the STATIC-99" in the Introduction section.

The Basic Rule: If the offender's criminal record indicates a separate conviction for a non-contact sexual offence, the offender is scored a "1" on this item. If the offender's criminal record does not show a separate conviction for a non-contact sexual offence, the offender is scored a "0" on this item.

This category requires a conviction for a non-contact sexual offence such as:

- Exhibitionism
- Possessing obscene material
- Obscene telephone calls
- Voyeurism
- Exposure
- Elicit sexual use of the Internet
- Sexual Harassment (Unwanted sexual talk)
- In certain jurisdictions "Criminal Trespass" or "Trespass by Night" may be used as a charge for voyeurism – these would also count

The criteria for non-contact sexual offences are strict: the offender must have been convicted, and the offence must indicate non-contact sexual misbehaviour. The "Index" offence(s) may include a conviction for a non-contact sexual offence and this offence can count in this category. The most obvious example of this is where an offender is charged and convicted of Exposure for "mooning" a woman from a car window. This would result in a coding of "1" for this item.

There are some cases, however, where the legal charge does not reflect the sexual nature of the offence. Take, for example, the same situation where an offender is charged with Exposure for "mooning" a woman from a car window, but the case is pled-down to, and the offender is finally convicted of Disorderly Conduct. In cases like this, while this item requires that there be a conviction, the coding of a non-contact sexual offence can be based on the behaviour that occurred in cases where the name of the offence is ambiguous.

Charges and arrests do not count, nor do self-reported offences. Sexual offences in which the offender intended to make contact with the victim (but did not succeed) would be considered attempted contact offences and are coded as contact offences (e.g., invitation to sexual touching, attempted rape). Some offences may include elements of both contact and non-contact offences, for example, sexual talk on Internet - arranging to meet the child victim. In this case, the conviction would count as a non-contact sex offence.

Attempted Contact Offences

Invitation to Sexual Touching, Attempted Rape and other such "attempted" contact offences are counted as "Contact" offences due to their intention.

Item # 6 Prior Sentencing Dates

The Basic Principle: This item and the others that relate to criminal history and the measurement of persistence of criminal activity are based on a firm foundation in the behavioural literature. As long ago as 1911 Thorndyke stated that the “the best predictor of future behaviour, is past behaviour”. Andrews & Bonta (2003) state that having a criminal history is one of the “Big Four” predictors of future criminal behaviour. Prior Sentencing Dates is a convenient method of coding the length of the criminal record.

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Institutional rule violations do not count, even when the offence was for behaviour that could have resulted in a legal sanction if the offender had not already been incarcerated.

Count:

- Juvenile offences count (if you know about them – please see section on the use of self-report in the Introduction)
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Note: for this item there have been some changes to the rules from previous versions. Some rules were originally written to apply to a specific jurisdiction. Over time, and in consultation with other jurisdictions the rules have been generalized to make them applicable across jurisdictions in a way that preserves the original intent of the item.

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Item # 7 - Any Convictions for Non-contact Sex Offences

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The Basic Rule: If the offender's criminal record indicates a separate conviction for a non-contact sexual offence, the offender is scored a "1" on this item. If the offender's criminal record does not show a separate conviction for a non-contact sexual offence, the offender is scored a "0" on this item.

This category requires a conviction for a non-contact sexual offence such as:

- Exhibitionism
- Possessing obscene material
- Obscene telephone calls
- Voyeurism
- Exposure
- Elicit sexual use of the Internet
- Sexual Harassment (Unwanted sexual talk)
- In certain jurisdictions "Criminal Trespass" or "Trespass by Night" may be used as a charge for voyeurism – these would also count

The criteria for non-contact sexual offences are strict: the offender must have been convicted, and the offence must indicate non-contact sexual misbehaviour. The "Index" offence(s) may include a conviction for a non-contact sexual offence and this offence can count in this category. The most obvious example of this is where an offender is charged and convicted of Exposure for "mooning" a woman from a car window. This would result in a coding of "1" for this item.

There are some cases, however, where the legal charge does not reflect the sexual nature of the offence. Take, for example, the same situation where an offender is charged with Exposure for "mooning" a woman from a car window, but the case is pled-down to, and the offender is finally convicted of Disorderly Conduct. In cases like this, while this item requires that there be a conviction, the coding of a non-contact sexual offence can be based on the behaviour that occurred in cases where the name of the offence is ambiguous.

Charges and arrests do not count, nor do self-reported offences. Sexual offences in which the offender intended to make contact with the victim (but did not succeed) would be considered attempted contact offences and are coded as contact offences (e.g., invitation to sexual touching, attempted rape). Some offences may include elements of both contact and non-contact offences, for example, sexual talk on Internet - arranging to meet the child victim. In this case, the conviction would count as a non-contact sex offence.

Attempted Contact Offences

Invitation to Sexual Touching, Attempted Rape and other such "attempted" contact offences are counted as "Contact" offences due to their intention.

Internet Crimes

Internet crimes were not recorded in the original samples for the STATIC-99 because the Internet had not advanced to the point where it was commonly available. As a result, determining how to score Internet crimes on the STATIC-99 requires interpretation beyond the available data. Internet crimes could be considered in two different ways. First, they could be considered a form of attempted sexual contact, where the wrongfulness of the behaviour is determined by what is about to happen. Secondly, they could be considered an inappropriate act in themselves, akin to indecent telephone calls (using an older technology). We believe that luring children over the Internet does not represent a fundamentally new type of crime but is best understood as a modern expression of traditional crimes. We consider communicating with children over the Internet for sexual purposes to be an inappropriate and socially harmful act in itself and, therefore, classify these acts with their historical precursors, such as indecent/obscene telephone calls, in the category of non-contact sexual offences.

Pimping and Prostitution Related Offences

Pimping and other prostitution related offences (soliciting a prostitute, promoting prostitution, soliciting for the purposes of prostitution, living off the avails of prostitution) do not count as non-contact sexual offences. (Note: prostitution was not illegal in England during the study period, though soliciting was).

Plea Bargains

Non-contact sexual offence convictions do not count if the non-contact offence charge arose as the result of a plea bargain. Situations such as this may appear in the criminal record where charges for a contact offence are dropped and the non-contact charges appear simultaneously with a guilty plea. An occurrence of this nature would be considered a contact offence and scored as such.

Revocation of Conditional Release for "Lifers", Dangerous Offenders, and Others with Indeterminate Sentences

If a "lifer", Dangerous Offender, or other offender with an already imposed indeterminate sentence is simply revoked (returned to prison from conditional release in the community without trial) for a Non-contact Sexual Offence that is of sufficient gravity that a person not already involved with the criminal justice system would most likely be charged with a Non-contact Sexual Offence, this revocation of conditional release would count as a conviction for a Non-contact Sexual Offence. Note: the evaluator should be sure that were this offender not already under sanction that it is highly likely that a non-contact sexual offence charge would be laid by police.

Items #8, #9, & # 10 – The Three Victim Questions

The following three items concern victim characteristics: Unrelated Victims, Stranger Victims, and Male Victims. For these three items the scoring is based on all available credible information, including self-report, victim accounts, and collateral contacts. The items concerning victim characteristics, however, only apply to sex offences in which the victims were children or non-consenting adults (Category “A” sex offences). Do not score victim information from non-sexual offences or from sex offences related to prostitution/pandering, possession of child pornography, and public sex with consenting adults (Category “B” sex offences). Do not score victim information on sexual offences against animals (Bestiality and similar charges).

In addition to all of the “everyday” sexual offences (Sexual Assault, Rape, Invitation to Sexual Touching, Buggery) you also score victim information on the following charges:

- Illegal use of a Minor in Nudity-oriented Material/Performance
- Importuning (Soliciting for Immoral Purposes)
- Indecent Exposure (When a specific victim has been identified)
- Sexually Harassing Telephone Calls
- Voyeurism (When a specific victim has been identified)

You do not score Victim Information on the following charges:

- Compelling Acceptance of Objectionable Material
- Deception to Obtain Matter Harmful to Juveniles
- Disseminating/Displaying Matter Harmful to Juveniles
- Offences against animals
- Pandering Obscenity
- Pandering Obscenity involving a Minor
- Pandering Sexually-Oriented Material involving a Minor
- Prostitution related offences

“Accidental Victims”

Occasionally there are “Accidental Victims” to a sexual offence. A recent example of this occurred when an offender was raping a woman in her living room. The noise awoke the victim’s four-year-old son. The son wandered into the living room and observed the rape in progress. The victim instructed her son to return to his bedroom and he complied at once. The perpetrator was subsequently charged and convicted of “Lewd and Lascivious Act on a Minor” in addition to the rape. In court the offender pleaded to both charges. In this case, the four-year-old boy would not count as a victim as there was no intention to commit a sexual offence against him. He would not count in any of the three victim items regardless of the conviction in court.

A common example of an accidental victim occurs when a person in the course of his/her daily life or profession happens across a sexual offence. Examples include police officers, park wardens, janitors, and floor walkers who observe a sexual offence in the course of their duties. If a male officer were to observe an exhibitionist exposing himself to a female, the offender would not be given the point for “Male Victim” as there was no intention to expose before the male officer. The evaluator would not give the offender a point for “male victim” unless the offender specifically chose a male officer to expose himself to. In the same vein, a floor walker or janitor who observes an offender masturbating while looking at a customer in a store would not be counted as a “stranger victim” or an “unrelated victim”. In short there has to be some intention to offend against that person for that person to be a victim. Merely

stumbling upon a crime scene does not make the observer a victim regardless of how repugnant the observer finds the behaviour.

Acquitted or Found Not Guilty

The criteria for coding victim information is “all credible information”. In this type of situation it is important to distinguish between the court’s stringent standard of determining guilt (Beyond a reasonable doubt) and “What is most likely to be true” – a balance of probabilities. When the court sticks to the “Beyond a reasonable doubt” criteria they are not concluding that someone did not do the crime, just that the evidence was insufficient to be certain that they did it. The risk assessment perspective is guided by: “On the balance of probabilities, what is most likely to be true?” If the assessor, “On the balance of probabilities” feels that the offence more likely than not took place the victims may be counted.

For the assessment, therefore, it may be necessary to review the cases in which the offender was acquitted or found “Not Guilty” and make an independent determination of whether it is more likely than not that there were actual victims. If, in the evaluators opinion, it were more likely that there was no sexual offence the evaluator would not count the victim information. In the resulting report the evaluator would generally include a score with the contentious victim information included and a score without this victim information included, showing how it effects the risk assessment both ways.

This decision to score acquittals and not guilty in this manner is buttressed by a research study in England that found that men acquitted of rape are more likely to be convicted of sexual offences in the follow-up period than men who had been found guilty {with equal times at risk} (Soothill et al., 1980).

Child Pornography

Victims portrayed in child pornography are not scored as victims for the purposes of the STATIC-99. They do not count as non-familial, stranger, nor male victims. Only real, live, human victims count. If your offender is a child pornography maker and a real live child was used to create pornography by your offender or your offender was present when pornography was created with a real live child, this child is a victim and should be scored as such on the STATIC-99 victim questions. (Note: manipulating pre-existing images to make child pornography [either digitally or photographically] is not sufficient – a real child must be present) Making child pornography with a real child victim counts as a “Category A” offence and, hence, with even a single charge of this nature, the STATIC-99 is appropriate to use.

The evaluator may, of course, in another section of the report make reference to the apparent preferences demonstrated in the pornography belonging to the offender.

Conviction, But No Victim

For the purposes of the STATIC-99, consensual sexual behaviour that is prohibited by statute does not create victims. This is the thinking behind Category “B” offences. Examples of this are prostitution offences and public toileting (Please see “Category “A” and Category “B” offences” in the Introduction section for a further discussion of this issue). Under some circumstances it is possible that in spite of a conviction for a sexual offence the evaluator may conclude that there are no real victims. An example of this could be where a boy (age 16 years) is convicted of Statutory Rape of his 15-year-old boyfriend (Assume age of consent in this jurisdiction to be 16 years of age). The younger boy tells the police that the sexual contact was consensual and the police report informs the evaluator that outraged parents were the complainants in the case. In a scenario like this, the younger boy would not be scored as a victim, the conviction notwithstanding.

Credible Information

Credible sources of information would include, but are not limited to, police reports, child welfare reports, victim impact statements or discussions with victims, collateral contacts and offender self-report.

If the information is credible (Children's Protective Association, victim impact statements, police reports) you may use this information to code the three victim questions, even if the offender has never been arrested or charged for those offences.

Exhibitionism

In cases of exhibitionism, the three victim items may be scored if there was a targeted victim, and the evaluator is confident that they know before whom the offender was trying to exhibit. If the offender exhibits before a mixed group, males and females, do not score "Male Victim" unless there is reason to believe that the offender was exhibiting specifically for the males in the group. Assume only female victims unless you have evidence to suggest that the offender was targeting males.

Example: If a man exposed to a school bus of children he had never seen before (both genders), the evaluator would score this offender one risk point for Unrelated Victim, one risk point for Stranger Victim, but would not score a risk point for Male Victim unless there was evidence the offender was specifically targeting the boys on the bus.

In cases where there is no sexual context (i.e., the psychotic street person who takes a shower in the town fountain) there are no victims regardless of how offended they might be or how many people witnessed the event.

Internet Victims and Intention

If an offender provides pornographic material over the Internet, the intent of the communication is important. In reality a policeman may be on the other end of the net in a "sting" operation. If the offender thought he was providing pornography to a child, even though he sent it to a police officer, the victim information is counted as if a child received it. In addition, when offenders attempt, over the Internet, to contact face-to-face a "boy or girl" they have contacted over the Internet the victim information counts as the intended victim, even if they only "met" a policeman.

Intention is important. In a case where a child was pretending to be an adult and an adult "shared" pornography with that person in the honest belief that they were (legally) sharing it with another adult there would not be a victim.

Polygraph Information

Victim information derived solely from polygraph examinations is not used to score the STATIC-99 unless it can be corroborated by outside sources or the offender provides sufficient information to support a new criminal investigation.

Prowl by Night - Voyeurism

For these types of offences the evaluator should score specific identifiable victims. However, assume only female victims unless you have evidence to suggest that the offender was targeting males.

Sexual Offences Against Animals

While the sexual assault of animals counts as a sexual offence, animals do not count as victims. This category is restricted to human victims. It makes no difference whether the animal was a member of the family or whether it was a male animal or a stranger animal.

Sex with Dead Bodies

If an offender has sexual contact with dead bodies these people do count as victims. The evaluator should score the three victim questions based upon the degree of pre-death relationship between the perpetrator and the victim.

Stayed Charges

Victim information obtained from stayed charges should be counted.

Victims Not at Home

If an offender breaks into houses, (regardless of whether or not the victims are there to witness the offence) to commit a sexual offence, such as masturbating on or stealing their undergarments or does some other sexual offence – victims of this nature are considered victims for the purposes of the STATIC-99. Assume only female victims unless you have evidence to suggest that the offender was targeting males.

Item # 8 - Any Unrelated Victims?

The Basic Principle: Research indicates that offenders who offend only against family members recidivate at a lower rate compared to those who have victims outside of their immediate family (Harris & Hanson, Unpublished manuscript). Having victims outside the immediate family is empirically related to a corresponding increase in risk.

Information Required to Score this Item: To score this item use all available credible information. "Credible Information" is defined in the previous section "Items #8, #9, & #10 -The Three Victim Questions".

The Basic Rule: If the offender has victims of sexual offences outside their immediate family, score the offender a "1" on this item. If the offender's victims of sexual offences are all within the immediate family score the offender a "0" on this item.

A related victim is one where the relationship is sufficiently close that marriage would normally be prohibited, such as parent, brother, sister, uncle, grandparent, stepbrother, and stepsister. Spouses (married and common-law) are also considered related. When considering whether step-relations are related or not, consider the nature and the length of the pre-existing relationship between the offender and the victim before the offending started. Step-relationships lasting less than two years would be considered unrelated (e.g., step-cousins, stepchildren). Adult stepchildren would be considered related if they had lived for two years in a child-parent relationship with the offender.

Time and Jurisdiction Concerns

A difficulty in scoring this item is that the law concerning who you can marry is different across jurisdictions and across time periods within jurisdictions. For example, prior to 1998, in Ontario, there were 17 relations a man could not marry, including such oddities as "nephew's wife" and "wife's grandmother". In 1998 the law changed and there are now only 5 categories of people that you cannot marry in Ontario: grandmother, mother, daughter, sister, and granddaughter (full, half, and adopted). Hence, if a man assaulted his niece in 1997 he would not have an unrelated victim but if he committed the same crime in 1998 he would technically be assaulting an unrelated victim. We doubt very much the change in law would affect the man's choice of victim and his resulting risk of re-offence. As a result the following rules have been adopted.

People who are seen as related for the purposes of scoring the STATIC-99

1. Legally married spouses
2. Any live-in lovers of over two years duration. (Girlfriends/Boyfriends become related once they have lived with the offender as a lover for two years)
3. Anyone too closely related to marry (by jurisdiction of residence of the perpetrator)
4. The following relations whether or not marriage is permitted in the jurisdiction of residence of the perpetrator:
 - Aunt
 - Brother's wife
 - Common-law wife/Ex common-law wife (lived together for 2 years)
 - Daughter
 - Father's wife/step-mother
 - First cousins
 - Granddaughter
 - Grandfather
 - Grandfather's wife

- Grandmother
- Grandson's wife
- Mother
- Niece/Nephew
- Sister
- Son's wife
- Stepdaughter/Stepson (Must have more than two years living together before abuse begins)
- Wife and Ex-wife
- Wife's daughter/step-daughter
- Wife's granddaughter
- Wife's grandmother
- Wife's mother

The relationships can be full, half, adopted, or common-law (two years living in these family relationships). The mirror relationships of the opposite gender would also count as related (e.g., brother, sons, nephews, granddaughter's husband).

People who are seen as unrelated for the purposes of scoring the STATIC-99

- Any step-relations where the relationship lasted less than two years
- Daughter of live-in girlfriend/Son of live-in girlfriend
(less than two years living together before abuse begins)
- Nephew's wife
- Second cousins
- Wife's aunt

Decisions about borderline cases (e.g., brother's wife) should be guided by a consideration of the psychological relationship existing prior to the sexual assault. If an offender has been living with the victim in a family/paternal/fraternal role for two years prior to the onset of abuse, the victim and the offender would be considered related.

Becoming "Unrelated"

If an offender who was given up for adoption (removed etc.) at birth (Mother and child having no contact since birth or shortly after) and the Mother (Sister, Brother etc.) is a complete stranger that the offender would not recognize (facial recognition) as their family, these biological family members could count as Unrelated Victims. This would only happen if the offender did not know they were offending against a family member.

Item # 9 - Any Stranger Victims?

The Basic Principle: Research shows that having a stranger victim is related to sexual recidivism. See Hanson and Bussière (1998), Table 1 – Item “Victim Stranger (versus acquaintance)”.

Information Required to Score this Item: Use all credible information to score this item. “Credible Information” is defined in the section “Items #8, #9, & #10 - The Three Victim Questions”.

The Basic Rule: If the offender has victims of sexual offences who were strangers at the time of the offence, score the offender a “1” on this item. If the offender’s victims of sexual offences were all known to the offender for at least 24 hours prior to the offence, score the offender a “0” on this item. If the offender has a “stranger” victim, Item #8, “Any Unrelated Victims”, is generally scored as well.

A victim is considered a stranger if the victim did not know the offender 24 hours before the offence. Victims contacted over the Internet are not normally considered strangers unless a meeting was planned for a time less than 24 hours after initial communication.

For Stranger victims, the offender can either not know the victim or it can be the victim not knowing the offender. In the first case, where the offender does not know the victim, (the most common case), the offender chooses someone who they are relatively sure will not be able to identify them (or they just do not care) and offends against a stranger. However, there have been examples where the offender “should” have known the victim but just did not recognize them. This occurred in one case where the perpetrator and the victim had gone to school together but the perpetrator did not recognize the victim as someone they knew. In cases like this, the victim would still be a stranger victim as the offender’s intention was to attack a stranger.

The criteria for being a stranger are very high. Even a slight degree of knowing is enough for a victim not to be a stranger. If the victim knows the offender at all for more than 24 hours, the victim is not a stranger. For example, if the victim was a convenience store clerk and they recognized the perpetrator as someone who had been in on several occasions to buy cigarettes, the victim would no longer be a stranger victim. If a child victim can say they recognize the offender from around the neighborhood and the perpetrator has said “Hi” to them on occasion, the child is no longer a stranger victim. The evaluator must determine whether the victim “knew” the offender twenty-four hours (24) before the assault took place. The criteria for “know/knew” is quite low but does involve some level of interaction. They need not know each other’s names or addresses. However, simply knowing of someone but never having interacted with them would not be enough for the victim to count as “known”.

The Reverse Case

In cases of “stalking” or stalking-like behaviours the offender may know a great deal about the victim and their habits. However, if the victim does not know the offender when they attack this still qualifies as a stranger victim.

The “24 hour” rule also works in reverse – there have been cases where a performer assaulted a fan the first time they met. In this case, the victim (the fan) had “known of” the performer for years, but the performer (the perpetrator) had not known the fan for 24 hours. Hence, in cases such as this, the victim would count as a stranger because the perpetrator had not known the victim for 24 hours prior to the offence.

Internet, E-mail, and Telephone

Sometimes offenders attempt to access or lure victims over the Internet. This is a special case and the threshold for not being a stranger victim is quite low. If the offender and the victim have communicated over the Internet (e-mail, or telephone) for more than twenty-four hours (24 hours) before the initial face-

to-face meeting, the victim (child or adult) is not a stranger victim. To be clear, this means that if an offender contacts, for the first time, a victim at 8 p.m. on a Wednesday night, their first face-to-face meeting must start before 8 p.m. on Thursday night. If this meeting starts before 8 p.m., and they remain in direct contact, the sexual assault might not start until midnight – as long as the sexual assault is still within the first face-to-face meeting – this midnight sexual assault would still count as a stranger assault. If they chat back and forth for longer than 24 hours, the victim can no longer be considered a stranger victim for the purposes of scoring the STATIC-99.

It is possible in certain jurisdictions to perpetrate a sexual offence over the Internet, by telephone or e-mail and never be in physical proximity to the victim. If the offender transmits sexually explicit/objectionable materials over the Internet within 24 hours of first contact, this can count as a stranger victim; once again the “24 hour rule” applies. However, if the perpetrator and the victim have been in communication for more than 24 hours prior to the sending of the indecent material or the starting of indecent talk on the telephone then the victim can no longer be considered a stranger.

Becoming a “Stranger” Again

It is possible for someone who the offender had met briefly before to become a stranger again. It is possible for the offender to have met a victim but to have forgotten the victim completely (over a period of years). If the offender believed he was assaulting a stranger, the victim can be counted as a stranger victim. This occurred when an offender returned after many years absence to his small hometown and assaulted a female he thought he did not know, not realizing that they had gone to the same school.

Item # 10 - Any Male Victims?

The Basic Principle: Research shows that offenders who have offended against male children or male adults recidivate at a higher rate compared to those who do not have male victims. Having male victims is correlated with measures of sexual deviance and is seen as an indication of increased sexual deviance; see Hanson and Bussière (1998), Table 1.

Information Required to Score this Item: To score this item use all available credible information. "Credible Information" is defined in section "Items #8, #9, & #10 - The Three Victim Questions".

The Basic Rule: If the offender has male victims of sexual offences, non-consenting adults or child victims, score the offender a "1" on this item. If the offender's victims of sexual offences are all female, score the offender a "0" on this item.

Included in this category are all sexual offences involving male victims. Possession of child pornography involving boys, however, does not count. Exhibitionism to a mixed group of children (girls and boys) would not count unless there was clear evidence the offender was targeting the boys. Contacting male victims over the Internet does count.

If an offender assaults a transvestite in the mistaken belief the victim is a female (may be wearing female clothing) do not score the transvestite as a male victim. If it is certain the offender knew he was assaulting a male before the assault, score a male victim.

In some cases a sexual offender may beat-up or contain (lock in a car trunk) another male in order to sexually assault the male's date (wife, etc.). If the perpetrator simply assaults the male (non-sexual) in order to access the female you do not count him as a male victim on the STATIC-99. However, if the perpetrator involves the male in the sexual offence, such as tying him up and making him watch the rape (forced voyeuristic activity), the assault upon the male victim would count as a sexual offence and the male victim would count on the STATIC-99.

Scoring the STATIC-99 & Computing the Risk Estimates

Using the STATIC-99 Coding Form (Appendix 5) sum all individual item scores for a total risk score based upon the ten items. This total score can range from "0" to "12".

Scores of 6 and greater are all considered high risk and treated alike.

Once you have computed the total raw score refer to the table titled STATIC-99 Recidivism Percentages by Risk Level (Appendix 6).

Here you will find recidivism risk estimates for both sexual and violent recidivism over 5, 10, and 15-year projections. In the left-most column find the offender's raw STATIC-99 risk score. Remember that scores of 6 and above are read off the "6" line, high risk.

For example, if an offender scored a "4" on the STATIC-99 we would read across the table and find that this estimate is based upon a sample size of 190 offenders which comprised 18% of the original sample. Reading further, an offender with a score of "4" on the STATIC-99 is estimated as having a 26% chance of sexual reconviction in the first 5 years of liberty, a 31% chance of sexual reconviction over 10 years of freedom, and a 36% chance of sexual reconviction over 15 years in the community.

For violent recidivism we would estimate that an offender that scores a "4" on the STATIC-99 would have a 36% chance of reconviction for a violent offence over 5 years, a 44% chance of reconviction for a violent offence over 10 years, and a 52% chance of reconviction for a violent offence over a 15 year period. It is important to remember that sexual recidivism is included in the estimates of violent recidivism. You **do not** add these two estimates together to create an estimate of violent and sexual recidivism. The estimates of violent recidivism include incidents of sexual recidivism.

STATIC-99 risk scores may also be communicated as nominal risk categories using the following guidelines. Raw STATIC-99 scores of "0" and "1" should be reported as "Low Risk", scores of "2" and "3" reported as "Moderate-Low" risk, scores of "4" and "5" reported as "Moderate-High" risk, and scores of "6" and above as "High Risk".

Having determined the estimated risk of sexual and violent recidivism we suggest that you review Appendix seven (7) which is a suggested template for communicating STATIC-99 risk information in a report format.

Appendices

Appendix One

Adjustments in Risk Based on Time Free

In general, the expected sexual offence recidivism rate should be reduced by about half if the offender has five to ten years of offence-free behaviour in the community. The longer the offender has been offence-free, post-Index, the lower the expected recidivism rate. It is not known what the expected rates of sexual re-offence should be if the offender has recidivated post-Index with a non-sexual offence. Presently, no research exists shedding light on this issue. Arguments could be made that risk scores should be increased (further criminal activity), decreased (he has still not committed another sexual offence in the community) or remain the same. We suspect that an offender who remains criminally active will maintain the same risk for sexual recidivism.

Adjusted crime-free rates only apply to offenders who have been without a new sexual or violent offence. Criminal misbehaviour such as threats, robberies, and assaults void any credit the offender may have for remaining free of additional sexual offences. For these purposes, an offender could, theoretically, commit minor property offences and still remain offence-free.

The recidivism rate estimates reported in Hanson & Thornton (2000) are based on the offender's risk for recidivism at the time they were released into the community after serving time for a sexual offence (Index offence). As offenders successfully live in the community without incurring new offences, their recidivism risk declines. The following table provides reconviction rates for new sexual offences for the three STATIC-99 samples where survival data were available (Millbrook, Pinel, HM Prison), based on offence-free time in the community. "Offence-free" means no new sexual or violent convictions, nor a non-violent conviction that would have resulted in more than minimal jail time (1-2 months).

The precise amount of jail time for non-violent recidivism was not recorded in the data sets, but substantial periods of jail time would invalidate the total time at risk. We do not recommend attempting to adjust the survival data given below by subtracting "time in prison for non-violent offences" from the total time elapsed since release from Index sexual offence.

For example, if offender "A" has been out for five years on parole got 60 days in jail for violating a no-drinking condition of parole the adjusted estimates would most likely still apply. However, if offender "B" also out on parole for five years got 18 months for Driving While Under the Influence these adjustments for time at risk would not be valid.

Adjusted risk estimates for time free would apply to offenders that are returned to custody for technical violations such as drinking or failing to register as a sexual offender.

Table for Adjustments in Risk Based on Time Free

| STATIC-99 Risk Level at original assessment | Years offence-free in community | | | | | |
|---|---------------------------------|------|--------|------|--------|--------|
| | 0 | 2 | 4 | 6 | 8 | 10 |
| Recidivism rates – Sex Offence Convictions % | | | | | | |
| 0-1 (n = 259) | | | | | | |
| 5 year | 5.7 | 4.6 | 4.0 | 2.0 | 1.4 | 1.4 |
| 10 year | 8.9 | 6.4 | 4.6 | 3.3 | 3.2 | (5.8) |
| 15 year | 10.1 | 8.7 | 9.5 | 7.7 | (6.5) | |
| 2-3 (n = 412) | | | | | | |
| 5 year | 10.2 | 6.8 | 4.4 | 3.1 | 5.5 | 5.3 |
| 10 year | 13.8 | 11.1 | 9.1 | 8.1 | 8.2 | 8.4 |
| 15 year | 17.7 | 14.5 | 13.6 | 13.9 | (18.7) | |
| 4-5 (n = 291) | | | | | | |
| 5 year | 28.9 | 14.5 | 8.0 | 6.9 | 7.6 | 6.8 |
| 10 year | 33.3 | 21.4 | 13.7 | 11.5 | (13.1) | (11.5) |
| 15 year | 37.6 | 22.8 | (18.7) | | | |
| 6+ (n = 129) | | | | | | |
| 5 year | 38.8 | 25.8 | 13.1 | 7.0 | 9.4 | 13.2 |
| 10 year | 44.9 | 30.3 | 23.7 | 16.0 | (17.8) | (17.8) |
| 15 year | 52.1 | 37.4 | (27.5) | | | |

Note: The total sample was 1,091. The number of cases available for each analysis decreases as the follow-up time increases and offenders recidivate. Values in parentheses were based on less than 30 cases and should be interpreted with caution.

Appendix Two

Self-Test

1. **Question:** In 1990, Mr. Smith is convicted of molesting his two stepdaughters. The sexual abuse occurred between 1985 and 1989. While on conditional release in 1995, Mr. Smith is reconvicted for a sexual offence. The offence related to the abuse of a child that occurred in 1980. Which conviction is the Index offence?

Answer: The 1990 and 1995 convictions would both be considered part of the Index offence. Neither would be counted as a prior sexual offence. The 1995 conviction is pseudo-recidivism because the offender did not re-offend after being charged with the 1990 offence.

2. **Question:** In April 1996, Mr. Jones is charged with sexual assault for an incident that occurred in January 1996. He is released on bail and reoffends in July 1996, but this offence is not detected until October 1996. Meanwhile, he is convicted in September 1996, for the January 1996 incident. The October 1996 charge does not proceed to court because the offender is already serving time for the September 1996 conviction. You are doing the evaluation in November. What is the Index offence?

Answer: The October 1996 charge is the Index offence because the offence occurred after Mr. Jones was charged for the previous offence. The Index sexual offence need not result in a conviction.

3. **Question:** In January 1997, Mr. Dixon moves in with Ms. Trembley after dating since March 1996. In September 1999, Mr. Dixon is arrested for molesting Ms. Trembley's daughter from a previous relationship. The sexual abuse began in July 1998. Is the victim related?

Answer: No, the victim would not be considered related because when the abuse began, Mr. Dixon had not lived for two years in a parental role with the victim.

4. **Question:** At age 15, Mr. Miller was sent to a residential treatment centre after it was discovered he had been engaging in sexual intercourse with his 12 year old stepsister. Soon after arriving, Mr. Miller sexually assaulted a fellow resident. He was then sent to a secure facility that specialized in the treatment of sexual offenders. Charges were not laid in either case. At age 24, Mr. Miller sexually assaults a cousin and is convicted shortly thereafter. Mr. Miller has how many prior sexual offences?

Answer: For Item #5, Prior Sexual Offences, score this as 2 prior charges and 2 prior convictions. Although Mr. Miller has no prior convictions for sexual offences, there are official records indicating he has engaged in sexual offences as an adolescent that resulted in custodial sanctions on two separate occasions. The Index offence at age 24 is not counted as a prior sexual offence.

5. **Question:** Mr. Smith was returned to prison in July 1992 for violating several conditions of parole including child molestation, lewd act with a child and contributing to the delinquency of a minor. Once back in prison he sexually assaulted another prisoner. Mr. Smith has now been found guilty of the sexual assault and the judge has asked you to contribute to a pre-sentence report. How many Prior Sexual Offence (Item #5) points would Mr. Smith receive for his parole violations?

Answer: 1 charge and no convictions. Probation, parole and conditional release violations for sexual misbehaviours are counted as one charge, even when there are violations of multiple conditions of release.

6. **Question:** Mr. Moffit was charged with child molestation in April 1987 and absconded before he was arrested. Mr. Moffit knew the police were coming to get him when he left. He travelled to another jurisdiction where he was arrested and convicted of child molesting in December 1992. He served 2 years in prison and was released in 1994. He was apprehended, arrested and convicted in January of 1996 for the original charges of Child Molestation he received in April 1987. Which offence is the Index offence?

Answer: The most recent offence date, December 1992 becomes the Index offence. In this case, the offence dates should be put back in chronological order given that he was detected and continued to offend. The April, 1987 charges and subsequent conviction in January of 1996 become a prior sexual offence.

7. **Question:** While on parole, Mr. Jones, who has an extensive history of child molestation, was found at the county fair with an 8 year-old male child. He had met the child's mother the night before and volunteered to take the child to the fair. Mr. Jones was in violation of his parole and he was returned to prison. He subsequently got out of prison and six months later re-offended. You are tasked with the pre-sentence report. Do you count the above parole violation as a prior sex offence charge?

Answer: No. Being in the presence of children is not counted as a charge for prior sex offences unless an offence is imminent. In this case, Mr. Jones was in a public place with the child among many adults. An incident of this nature exhibits "high-risk" behaviour but is not sufficient for a charge of a sex offence.

Appendix Three

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individuals committed, and lack of demonstrated efficacy are all cited.¹²² As of December 2004, 3,943 people had been confined under these laws, with only 427 of them having been conditionally released (most of them) or discharged.¹²³

Civil commitment is arguably the most draconian of the so-called non-punitive sex offender legislation in that it confines, for an indeterminate and potentially life-long period of time, offenders who have already served their criminal sentences. It confines these offenders essentially because of crimes they might commit in the future. Civil commitment should be used as a last resort and only for offenders whose dangerousness has been established on a case-by-case basis.

VI. Problems with the Current Responses to Sexual Offending

Current sex offender legislation regarding community notification in particular needs to be more focused. The broad range of offenders encompassed by these laws detracts attention and resources away from those offenders that need the greatest attention, monitoring, and supervision, namely, offenders who pose the highest risk of recidivism. As discussed, individuals who commit incest or statutory rape, or who possess child pornography, are often considered to be sex offenders for purposes of community notification. While the putative reason for sex offender legislation is a regulatory one—protecting citizens¹²⁴—notification regimes are not risk-discriminating. For instance, adult relatives who engage in consensual sexual intercourse with one another pose little, if any, risk to the community, yet they can be subject to registration and notification requirements. This broad scope needlessly scares community members by overstating the

presence of what are perceived to be dangerous offenders, places burdens on offenders who pose little or no risk of harming anyone, and drains financial, law enforcement, and administrative resources.

Notification also makes it difficult for offenders to obtain housing and employment. In a study involving thirty convicted sex offenders subjected to community notification, 83% reported that they had been excluded from a residence and 57% reported that they had lost employment as a result of their status as sex offenders.¹²⁵ In another study, 300 employers were surveyed as to whether they would hire ex-convicts, including offenders who had committed sexual crimes against children or sexual assault against adults.¹²⁶ The overwhelming majority of employers surveyed stated that they would not hire the sex offenders.¹²⁷ Job stability, however, significantly reduces the likelihood that a sex offender will re-offend,¹²⁸ making notification counterproductive in this respect.

Given that landlords are reluctant to house sex offenders, not surprisingly many are homeless.¹²⁹ Ironically, this makes monitoring them more difficult. In addition, with sex offenders forced to move from place to place, even state to state, it becomes harder for offenders to maintain needed ongoing relationships with mental health professionals and family members, friends, or community members and organizations that can provide

¹²² John Q. La Fond & Bruce J. Winick, *Doing More Than Their Time* (op-ed), N.Y. TIMES, May 21, 2006, at sec. 14, p. 13.

¹²³ *Id.*

¹²⁴ See, e.g., N.Y. CORRECT. LAW Art. 6-C Note (2005).

¹²⁵ Richard G. Zevitz & Mary Ann Farkas, *Sex Offender Community Notification: Managing High Risk Criminals or Exacting Further Vengeance?* 18 BEHAV. SCI. & L. 375, 383 (2000).

¹²⁶ Shelley Albright & Furjen Denq, *Employer Attitudes Toward Hiring Ex-Offenders*, 76(2) PRISON J. 118, 124-25 (1996).

¹²⁷ *Id.* at 129-31.

¹²⁸ Candace Kruttschnitt et al., *Predictors of Desistance among Sex Offenders: The Interaction of Formal and Informal Social Controls*, 17 JUST. Q. 61, 80 (2000).

¹²⁹ See, e.g., Monica Davey, *Iowa's Residency Rules Drives Sex Offenders Underground*, N.Y. TIMES, Mar. 15, 2006, at A1.

support services, which in turn may enhance the likelihood of recidivism.¹³⁰

Vigilantism has also been associated with community notification laws. When communities are notified about the presence of a sex offender, some community members may harass, intimidate, or even violently attack the offenders. In one instance, a teenage offender received death threats and found his dog decapitated on his step.¹³¹ In another instance, arsonists burned down the home where a released sex offender was supposed to live.¹³² One study found that amongst 942 sex offenders in Washington state subject to community notification, there were thirty-three reported incidents of harassment of some form against the offender or his family.¹³³ While this number may seem low, one must keep in mind that such incidents may be underreported, as offenders may not want to call further attention to themselves or their families, and that even the possibility of such vigilantism can cause

¹³⁰ Further exacerbating this dislocation, a number of communities and states prohibit convicted sex offenders from living within a certain distance of designated locations such as schools or child-care centers. See, e.g., IOWA CODE § 692A.2A (2005). These restrictions have had the effect of virtually excluding convicted sex offenders from urban areas, as well as preventing them from living with family members. Davey, *supra* note 129. Interestingly, the Iowa County Attorney's Association, an organization of Iowa prosecutors, has criticized such legislation as being counterproductive, asserting that it causes homelessness and is too broad, and that no research shows that such a restriction reduces sex offenses. IOWA COUNTY ATTORNEYS ASSOCIATION, STATEMENT ON SEX OFFENDER RESIDENCY RESTRICTIONS IN IOWA (Jan. 2006), http://spd.iowa.gov/filemgmt_data/files/SexOffender.pdf.

¹³¹ Jan Hoffman, *New Law Is Urged on Freed Sex Offenders*, N.Y. TIMES, Aug. 4, 1994, at B1.

¹³² Joshua Wolf Shenk, *Do 'Megan's Laws' Make a Difference?* U.S. NEWS & WORLD REP., Mar. 9, 1998, at 27.

¹³³ SCOTT MATSON & ROXANNE LIEB, WASHINGTON STATE INSTITUTE FOR PUBLIC POLICY, COMMUNITY NOTIFICATION IN WASHINGTON STATE: 1996 SURVEY OF LAW ENFORCEMENT, Executive Summary, Doc. No. 96-11-1101 (Nov. 1996), available at <http://www.wsipp.wa.gov/rptfiles/sle.pdf>.

significant worry amongst offenders and their families and hamper treatment efforts.

Another common result of notification is isolation. Social ostracism that the sex offender experiences may push him farther from integrating with society, decrease social skills, and make re-offense more likely.¹³⁴

While community notification increases public anxiety,¹³⁵ an article published in October 2005 noted that in the ten years that such laws have been in place, there has not been a single study that has shown reduced recidivism of sexual violence attributable to notification.¹³⁶ In December of that same year, a report from the Washington Institute of Public Policy did find that sex offenses had decreased in the years since Washington's passage of sex offender legislation that contained registration and notification provisions.¹³⁷

There are a number of problems with drawing conclusions from this decrease, however. First, as the report acknowledges, Washington has increased the length of incarceration for sex offenders during this period.¹³⁸ If offenders are incarcerated for longer periods of time, they have less opportunity to offend. Thus, the decrease in recidivism could be attributable to increased length of incarceration. Second, even if one ignores the incarceration issue, the notification regime in Washington is risk-discriminating in that it provides for community notification only for

¹³⁴ TERRY, *supra* note 24, at 196.

¹³⁵ Mary Bolding, *California's Registration and Community Notification Statute: Does It Protect the Public from Convicted Sex Offenders?*, 25 W. ST. U.L. REV. 81, 81 (1997).

¹³⁶ EXECUTIVE BOARD OF DIRECTORS, ASSOCIATION FOR THE TREATMENT OF SEXUAL ABUSERS, THE REGISTRATION AND COMMUNITY NOTIFICATION OF ADULT SEXUAL OFFENDERS (Oct. 5, 2005), <http://www.atsa.com/ppnotify.html>.

¹³⁷ ROBERT BARNOSKI, WASHINGTON STATE INSTITUTE FOR PUBLIC POLICY, SEX OFFENDER SENTENCING IN WASHINGTON STATE: HAS COMMUNITY NOTIFICATION REDUCED RECIDIVISM? Doc. No. 05-12-1202 (Dec. 2005), <http://www.wsipp.wa.gov/rptfiles/05-12-1202.pdf>.

¹³⁸ *Id.*

moderate and high risk offenders,¹³⁹ thus obviating some, but not all, of the inefficiencies and counterproductive components of notification regimes. Those notification regimes that are not risk-discriminating and that are not accompanied by treatment, employment, and housing for offenders are unjust and inefficient. Third, it is notable that with fifty states having enacted community notification laws, this is the only study that we have located that suggests some effect in terms of reducing recidivism. Clearly, more research on the impact of these laws is needed.

Civil commitment as a mechanism for responding to sexual offenders also carries a heavy price. First, a general right to be free from physical restraint and various liberty interests are afforded by the Constitution.¹⁴⁰ There are of course situations where these important guarantees can be tempered, but such restrictions should be limited.¹⁴¹ Second, civil commitment is very expensive. The cost of housing and treating a civilly committed person for one year in Washington is \$138,000.¹⁴² Overall, the cost of operating special facilities for the commitment of sex offenders at the national level is estimated to be \$224 million per year.¹⁴³ Thus, if there are cheaper or less restrictive ways to achieve the goals of civil commitment, namely, protect public safety and promote rehabilitation, they should be pursued.

VII. Treatment Options

¹³⁹ WASH. REV. CODE § 4.24.550 (2006).

¹⁴⁰ See *Kansas v. Hendricks*, 521 U.S. at 356.

¹⁴¹ *Id.*

¹⁴² TERRY, *supra* note 24, at 211.

¹⁴³ ROXANNE LIEB & KATHY GOOKIN, WASHINGTON STATE INSTITUTE FOR PUBLIC POLICY, INVOLUNTARY COMMITMENT OF SEXUALLY VIOLENT PREDATORS: COMPARING STATE LAWS, Doc. No. 05-03-1101 (2005), available at <http://www.wsipp.wa.gov/rptfiles/05-03-1101.pdf>. On the other hand, the average cost per year of housing an inmate in state prison is \$22,650. JAMES STEPHAN, U.S. DEP'T OF JUSTICE, STATE PRISON EXPENDITURES, 2001, SPECIAL REPORT, NCJ 202949 (June 2004), available at <http://www.ojp.usdoj.gov/bjs/pub/pdf/spe01.pdf>.

While there is no known cure for inappropriate sexual thoughts and behavior,¹⁴⁴ there are treatments that can significantly reduce their strength and occurrence. Treatments include non-biological therapies such as cognitive behavioral therapy, and biological therapies such as surgical castration and pharmacological (drug) therapy.

Among the non-biological treatments for sex offenders, cognitive-behavioral therapy is the most common.¹⁴⁵ During cognitive-behavioral therapy, offenders may obtain social skills training, sex education, cognitive restructuring, aversive conditioning, and victim empathy therapy.¹⁴⁶

Social skills training attempts to provide the offender with social competency, so that the individual may pursue appropriate social interactions; sex education informs the offender of the risks and practice of sexual behavior; cognitive restructuring helps the offender avoid cognitive distortions that may have provided the offender with a justification for his behavior; aversive conditioning pairs painful, annoying, or unpleasant experiences, such as a bad smell, with an offender's inappropriate sexual fantasy; and victim empathy therapy helps offenders understand the harm they have caused to the victim and that the victim is also a person with feelings.¹⁴⁷ Offenders may also undergo relapse prevention therapy, a type of cognitive-behavioral therapy, where they learn how to identify problematic thoughts and behaviors and stop their progression.¹⁴⁸

¹⁴⁴ TERRY, *supra* note 24, at 139.

¹⁴⁵ *Id.* at 154.

¹⁴⁶ Richard B. Krueger & Meg S. Kaplan, *Behavioral and Psychological Treatment of the Paraphilic and Hypersexual Disorders*, 8 J. PSYCHIATRIC PRAC. 24-25 (2002).

¹⁴⁷ *Id.*

¹⁴⁸ THE ASSOCIATION FOR THE TREATMENT OF SEXUAL ABUSERS, REDUCING SEXUAL ABUSE THROUGH REATMENT AND INTERVENTION WITH ABUSERS (1996), <http://www.atsa.com/pptreatment.html> [hereinafter ATSA].

Cognitive behavioral therapy, while often successful in reducing recidivism amongst sex offenders,¹⁴⁹ does not always work, either completely or at all.¹⁵⁰ Thus, it is very important for a mental health professional to determine when cognitive-behavioral therapy is appropriate, and to monitor its effectiveness.

Surgical castration¹⁵¹ involves removal of the testes, which has the effect of significantly reducing circulating testosterone.¹⁵² While surgical castration does decrease sex drive,¹⁵³ it does not always do so completely.¹⁵⁴ Further, many view surgical castration, which they associate with the eugenics movement that sought to sterilize those with undesirable traits thought to be hereditary,¹⁵⁵ with fear and skepticism. Additionally, the reduction of sex drive achieved through surgical castration can be overcome with the use of exogenous androgens, such as testosterone,¹⁵⁶ which may be obtained surreptitiously. Nevertheless, some authorities believe that surgical castration may become more common, as it has achieved the lowest recidivism rate of any treatment.¹⁵⁷

¹⁴⁹ Polizzi et al., *What Works in Adult Sex-Offender Treatment? A Review of Prison- and Non-Prison-Based Treatment Programs*, 43 INT'L J. OFFENDER THERAPY & COMP. CRIMINOLOGY 357, 371 (1999).

¹⁵⁰ See ATSA, *supra* note 148.

¹⁵¹ Surgical castration is also referred to as physical castration or orchiectomy.

¹⁵² Kurt Freund, *Therapeutic Sex Drive Reduction*, 62 (Supp. 287) ACTA PSYCHIATRICA SCANDINAVICA 5, 15 (1980). For an updated review of surgical castration, see Richard B. Krueger et al., *Orchiectomy* (in preparation).

¹⁵³ Richard Wille & Klaus M. Beier, *Castration in Germany*, 2 ANNALS SEX RESEARCH 103, 129 (1989).

¹⁵⁴ TERRY, *supra* note 24, at 154.

¹⁵⁵ See Charles Scott & Trent Holmberg, *Castration of Sex Offenders: Prisoners' Rights Versus Public Safety*, 31 J. AM. ACAD. PSYCHIATRY L. 502, 502 (2003).

¹⁵⁶ J. Michael Bailey & Aaron S. Greenberg, *The Science and Ethics of Castration: Lessons from the Morse Case*, 92 NW. U.L. REV. 1225, 1235 (1998).

¹⁵⁷ Ariel Rosler & Eliezer Witztum, *Pharmacotherapy of Paraphilias in the Next Millennium*, 18 BEHAV. SCI. & L. 43, 44 (2000).

Pharmacological therapy,¹⁵⁸ however, is a viable option for many, particularly those with paraphilias. One of the most noteworthy studies on pharmacological therapy for sex offenders tested the efficacy of triptorelin, a drug that reduces male testosterone levels, in decreasing the deviant sexual desire and behavior of thirty men.¹⁵⁹ All of the men suffered from paraphilias, with twenty-five of them suffering specifically from pedophilia.¹⁶⁰ Before triptorelin use, the men reported an average of forty-eight deviant sexual fantasies per week (with a standard deviation of ten) and five incidents of abnormal sexual behavior per month (with a standard deviation of two).¹⁶¹

During treatment, which involved monthly intramuscular injections of triptorelin, supplemented with regular supportive psychotherapy (one to four sessions a month), all of the men had a prompt reduction in paraphilic activities, with the maximal reduction in the intensity of their sexual desire and symptoms occurring after three to ten months with the exception of one man in whom it was achieved after two years.¹⁶² All of the men reported that their sexual desire decreased considerably, that their sexual behavior became easily controllable, that their deviant sexual fantasies and urges disappeared completely, and that there were no incidents of abnormal sexual behavior during therapy.¹⁶³ Once the maximal effects of treatment were achieved, there were no sexual offenses reported by the men, by their relatives, or by a probation officer.¹⁶⁴ Symptoms returned among those men who stopped treatment, including three who

¹⁵⁸ Pharmacological therapy is also referred to as drug therapy or chemical castration.

¹⁵⁹ Ariel Rosler & Eliezer Witztum, *Treatment of Men with Paraphilia with a Long-Acting Analogue of Gonadotropin-Releasing Hormone*, 338 NEW ENG. J. MED. 416 (1998).

¹⁶⁰ *Id.* at 417.

¹⁶¹ *Id.* The study did not include a control group "because the men might have continued to offend while receiving a placebo." *Id.*

¹⁶² *Id.* at 418.

¹⁶³ *Id.*

¹⁶⁴ *Id.* at 418-19.

reported intolerable side effects. Further, for three of these men who were subsequently given an alternative medication (cyproterone acetate), two were subsequently prosecuted and received prison sentences for sex crimes.¹⁶⁵ Case studies of another testosterone-reducing drug, leuprolide acetate (brand name Lupron), reported successful results similar to those of triptorelin.¹⁶⁶

Currently, medroxyprogesterone acetate (MPA)¹⁶⁷ is the drug most commonly used to reduce serum testosterone levels.¹⁶⁸ MPA is given by injection and need only be administered once every three months.¹⁶⁹ Each injection costs about \$30 to \$75.¹⁷⁰ Gonadotropin releasing hormone agonists, such as depot-leuprolide acetate, though, are gaining a foothold¹⁷¹ because they have fewer adverse side-effects¹⁷² and are considered

more effective¹⁷³ than MPA. Although leuprolide acetate is significantly more expensive than MPA,¹⁷⁴ considering its treatment potential, it may well be worth the cost.

Pharmacological therapies are generally given to those with paraphilias, as they have stronger and more intense deviant sexual desires than other sex offenders.¹⁷⁵ As noted, however, pharmacological therapies may induce unpleasant or harmful side effects or for other reasons may be resisted by sex offenders. While the testosterone-reducing effects of drugs like MPA and leuprolide acetate may be overcome by taking exogenous androgens, standard laboratory analyses of blood and urine can be used to test for the presence of such androgens.¹⁷⁶ It is also important to note that pharmacological therapies need not be life-long; these therapies may be employed for short-term treatment that allows offenders to obtain some measure of control over their sexual impulses and enables other forms of treatment, such as behavioral therapy, to become effective.¹⁷⁷

However, pharmacological therapies have their limits. For instance, drugs that reduce

¹⁶⁵ *Id.* 419.

¹⁶⁶ Richard B. Krueger & Meg S. Kaplan, *Depot-Leuprolide Acetate for Treatment of Paraphilias: A Report of Twelve Cases*, 30(4) ARCHIVES SEXUAL BEHAV. 409 (2001). See also Peer Briken et al., *Treatment of Paraphilia with Luteinizing Hormone-Releasing Hormone Agonists*, 27 J. SEX & MARITAL THERAPY 45, 52 (2001); Richard B. Krueger & Meg S. Kaplan, *Chemical Castration: Treatment for Pedophilia*, in 2 DSM-IV-TR CASEBOOK 309, 309 (Michael B. First et al. eds., 2006).

¹⁶⁷ Available under the brand name Depo-Provera.

¹⁶⁸ TERRY, *supra* note 24, at 153.

¹⁶⁹ MPA can also be given orally. Luk Gijs & Louis Gooren, *Hormonal and Psychopharmacological Interventions in the Treatment of Paraphilias: An Update*, 33(4) J. SEX RESEARCH 273, 275 (1996).

¹⁷⁰ JENNIFER JOHNSON, PLANNED PARENTHOOD FEDERATION OF AMERICA, INC., IS THE SHOT RIGHT FOR YOU? (2006), <http://www.plannedparenthood.org/pp2/portal/files/portal/medicalinfo/birthcontrol/pub-depo-provera.xml>.

¹⁷¹ Fabian M. Saleh & Laurie L. Guidry, *Psychosocial and Biological Treatment Considerations for the Paraphilic and Nonparaphilic Sex Offender*, 31 J. AM. ACAD. PSYCHIATRY & L. 486, 490 (2003).

¹⁷² Krueger & Kaplan, *supra* note 166, at 418 (citing Smith et al., *Clinical Effects of Gonadotrophin-releasing Hormone Analogue in Metastatic Carcinoma of Prostate*, 25 UROLOGY 106 (1985)). Side effects of MPA include hyperglycemia, nightmares, weight gain, and lethargy. Rosler & Witztum, *supra* note 159, at 420. Side effects of leuprolide acetate include hot flashes and decreases in bone density, which can

be countered by administering, among other things, alendronate, vitamin D, and calcium. *Id.* at 419-20; Richard B. Krueger et al., *Prescription of Medroxyprogesterone Acetate to a Patient with Pedophilia, Resulting in Cushing's Syndrome and Adrenal Insufficiency*, SEXUAL ABUSE: J. RES. & TREATMENT (forthcoming 2006).

¹⁷³ *Id.* at 420-21.

¹⁷⁴ Although costs vary, the cost of one four-month dose has been set at \$2,660. WALGREENS, LUPRON DEPOT 30MG INJ, <http://www.walgreens.com/library/finddrug/druginfo1.jsp?particularDrug=Lupron&id=15887> (last visited July 19, 2006).

¹⁷⁵ TERRY, *supra* note 24, at 153.

¹⁷⁶ See Bailey & Greenberg, *supra* note 156, at 1236. For instance, anabolic steroids such as testosterone cypionate, which may help increase sex-drive, are easily detectable, even months after use. Lorenz C. Hofbauer & Armin E. Heufelder, *Endocrine Implications of Human Immunodeficiency Virus Infection*, 75 MED. 262, 271 (1996); Morris B. Mellion, *Anabolic Steroids in Athletics*, 30 AM. FAM. PHYSICIAN 113, 118 (1984).

¹⁷⁷ Krueger & Kaplan, *supra* note 166, at 419.

testosterone levels, like leuprolide acetate and MPA, may not have any effect on nonsexual violence.¹⁷⁸ Thus, for offenders without paraphilias or whose primary problems are non-sexual, or for offenders with paraphilias and nonsexual violence problems, behavioral therapies, either alone or in conjunction with pharmacological therapies, are necessary.

VIII. Recommendations

Before better means to reduce the occurrence of sexual offenses can be established, the potent obstacle of the political process must be recognized. In a representative democracy, elected legislators are responsible to and dependent upon the support of their constituents. Considering the significant inaccuracies in, and overall frenetic nature of, popularly held beliefs and attitudes regarding sex offenders, it is not surprising that legislators often feel they must adopt measures driven by fear rather than sound science or public policy.

In this vein, a Police Chief in Des Moines, Iowa, arguing for the repeal of an Iowa law placing residency restrictions on certain sex offenders that increased their homelessness and subsequently decreased the ability to monitor their whereabouts, worried that state legislators would not re-work the counterproductive statute out of political cowardice.¹⁷⁹ This fear needs to be overcome and the following recommendations implemented.

(1) Current medical practice has embraced "evidence-based medicine," which is "the conscientious, explicit, and judicious use of current best evidence in making decisions about the care of individual patients."¹⁸⁰ This approach integrates "individual clinical expertise with the best available external

clinical evidence [drawn] from systematic research."¹⁸¹ There is a similar need for "evidence-based legislation." Although recidivism rates are frequently bandied about in the course of legislative debates over proposed sex offender legislation, there is a need for more accurate and precise information on risk and treatment that will enable more appropriate decisions to be made. In general, educational and training programs regarding sex offenders should be made available to legislators and their staff to inform their decision-making.

(2) Sex offender legislation should be preceded by careful study and a projected cost-benefit analysis, rather than rely on speculation and public fears. In addition, any legislation that is enacted should always include a provision mandating and funding a cost-benefit analysis of the legislation and its effects. Building "sunset" provisions into this legislation can provide an opportunity for a systematic review of the cost-benefit analysis and the impact of the legislation, and can be considered in determining whether to modify the legislation.¹⁸²

(3) Sexual offending is a complex behavior and understanding and redressing it is a difficult challenge. Accordingly, proposals to reduce this criminal behavior should be carefully considered and studied. To promote this effort, multidisciplinary commissions should be formed with governmental support and charged to fully evaluate the effects and integration of sex offender-related legislation. These commissions should include mental health professionals, lawyers, criminologists, judges, and legislators. Such commissions should address sex abuse as both a criminal justice and a public health problem. The Centers for Disease Control and Prevention and the World Health Assembly (the decision-making body for the World Health Organization) have declared violence to be a

¹⁷⁸ *Id.*

¹⁷⁹ Lee Rood, *New Data Shows Twice as Many Sex Offenders Missing*, DES MOINES REG. & TRIB., Jan. 23, 2006, at 1A.

¹⁸⁰ David L. Sackett et al., *Evidence Based Medicine: What It Is and What It Isn't*, 312 BRITISH MED. J. 71, 71 (1996).

¹⁸¹ *Id.*

¹⁸² A "sunset" provision provides that the legislation, unless renewed, will expire after a specified period of time or upon a given date.

public health priority, and The Association for the Treatment of Sexual Abusers has suggested that this framework be extended to sexual violence.¹⁸³ The public health model is used to complement the criminal justice approach and strives to prevent the occurrence of crimes through the identification of risk factors and the development of interventions to address these factors.¹⁸⁴ A public health approach can develop not only appropriate post-offense responses, but also generate broader, more systematic, long-term changes that can help prevent the occurrence of sexual abuse and the development of sex offenders.

(4) Risk level classifications should be incorporated into society's responses to sex offenders, particularly with regard to their community notification systems, and a graduated response employed that limits the use of the most "punitive" mechanisms to those offenders that have been shown to pose the greatest risk. This would enable offenders who pose minimal risk and are unlikely to re-offend to reintegrate into society, as well as motivate all offenders to seek and comply with needed treatment programs to obtain this level of classification. Mental health professionals can now identify factors that are related to recidivism and, using sophisticated, empirically-validated instruments, accurately assess the likelihood of future risk.¹⁸⁵ These

¹⁸³ See, e.g., THE ASSOCIATION FOR THE TREATMENT OF SEXUAL ABUSERS, SEXUAL ABUSE AS A PUBLIC HEALTH PROBLEM (2001), <http://www.atsa.com/pppublichealth.html>.

¹⁸⁴ *Id.*

¹⁸⁵ While there are a number of instruments used to predict the likelihood of recidivism, the Static-99 is the most common and most validated. R. KARL HANSON, PUBLIC SAFETY AND EMERGENCY PREPAREDNESS CANADA, THE VALIDITY OF STATIC-99 WITH OLDER SEXUAL OFFENDERS (2005), http://ww2.psepc-sppcc.gc.ca/publications/Corrections/20050630_e.asp. The Static-99 considers ten static factors about an offender, such as the offender's gender and prior sexual offenses, and assigns a score to an offender based on the answers to questions related to these factors. See TERENCE W. CAMPBELL, ASSESSING SEX OFFENDERS 83-84 (2004). Static-99 shows "moderate predictive accuracy." R. Karl Hanson & David Thornton,

instruments should be used, for example, to determine what level of community notification is employed for various categories of sex offenders. Community notification should be tailored to the risk these offenders present.

(5) Legislative responses to sex offending should incorporate incentives that reward offenders who undergo, comply with, and maintain treatment, such as relieving these offenders of some of the obligations and hardships they would otherwise face. As noted, the strictest measures should be reserved for those offenders who pose the greatest, most difficult-to-reduce risk of re-offending, thereby targeting scarce resources and focusing attention in a more efficient and productive manner. Such incentives will further motivate offenders to seek and comply with needed treatment programs.

(6) Less restrictive alternatives (including both behavioral and pharmacological treatment) should be considered before civilly committing a sex offender and, where appropriate, be offered to the offender.¹⁸⁶ Such treatment should be provided free of charge or at least at an affordable rate. The successful employment of these alternatives can avoid the huge costs associated with civil commitment, while enhancing the likelihood that an offender becomes a productive member of society. At the same time, the availability of civil commitment or other mechanisms can help ensure treatment compliance.

Improving Risk Assessments for Sex Offenders: A Comparison of Three Actuarial Scales, 24 L. & HUM. BEHAV. 119, 129 (2000). Static-99 has its critics. See, e.g., CAMPBELL, *supra*, at 83-97. It is properly used as a starting point, both in practice and as a springboard for further research. A more comprehensive view of risk would involve considering both static and dynamic (such as current employment stability) factors. Further research is necessary, but risk assessment instruments have experienced steady improvement, improvement that will continue with new research and testing.

¹⁸⁶ Involuntary pharmacological therapy is not addressed here, as it raises numerous constitutional and ethical concerns that merit a separate, thorough analysis.

(7) Government supported opportunities for offenders to obtain employment, housing, treatment, and support services should be enhanced. Offenders cannot reintegrate into society and develop healthy living habits if they have no income, shelter, treatment, or support. Enhancing the likelihood that offenders must or will continually relocate because they lack these opportunities not only virtually ensures that offenders will not improve and exhibit appropriate behavior, but also makes it more difficult to monitor the offender to enhance public safety.

(8) Resources available to treat potential offenders should receive more publicity. Existing state-sponsored websites, publications, and education programs appropriately highlight the resources available to victims, as well as how people can identify and locate sex offenders. There is little or no attention given to advertising how and where a person with a sexual disorder can obtain competent and confidential treatment that will prevent inappropriate behavior from occurring. Governmental funding should be provided to enhance awareness of these services.¹⁸⁷ Additionally, governmental support should be supplied to ensure that people can obtain these resources even when they lack the ability to pay for these services.

(9) Drug and mental health courts have been successfully implemented in some locations.¹⁸⁸ These courts hear mostly or exclusively drug cases or relatively minor criminal cases involving defendants with a mental disorder, respectively, and have thus

¹⁸⁷ Examples of organizations that provide referrals to mental health professionals and programs that treat sex offenders include: The Safer Society Foundation, P.O. Box 340, Brandon, VT, 05733-0340, (802) 247-5141, www.saferociety.org; The Association for the Treatment of Sexual Abusers (ATSA), 4900 S.W. Griffith Dr., Suite 274, Beaverton, OR, 97005, (503) 643-1023, www.atsa.com, atsa@atsa.com.

¹⁸⁸ See, e.g., Jonathan E. Fielding et al., *Los Angeles County Drug Court Programs: Initial Results*, 23 J. SUBSTANCE ABUSE TREATMENT 217, 223 (2002).

developed significant experience and expertise in such matters. Sex offense courts may be a viable mechanism in which judges and parole or probation officers are knowledgeable about sex offenders, the treatment modalities specifically designed for sex offenders, the appropriate mechanisms to prevent recidivism, and how best to monitor and supervise offenders to ensure public safety.

However, there is much debate regarding specialized courts in the literature, and thus the matter needs further study.¹⁸⁹ Regardless of whether such specialized courts are implemented, educational and training programs regarding sex offenders should be made available to judges, as well as probation and parole officers, to inform their decision-making.

(10) Because of the limited knowledge and understanding of sex offending, funding and support for research to enhance this understanding is essential. Further research should focus on improving the collection and analysis of recidivism data; studying the effects on recidivism of existing non-punitive responses to sex offenders and possible alternatives; and examining, evaluating, and improving the efficacy of non-biological and biological treatment.

IX. Conclusion

¹⁸⁹ The issue of specialized sex courts is not a simple one. Scholars have long debated the merits and drawbacks of specialized courts as compared to courts of general jurisdiction. Proponents see specialization as beneficial insofar as the courts can develop significant expertise in the area of specialization and produce efficiencies such as those that economists have noted flow from specialization in the production of goods and services. Opponents worry that specialization can render these courts more susceptible to special interests and bias, and that the monotony (hearing the same cases over and over) and lack of prestige of a specialized judgeship might attract a lower-quality judiciary than a generalized judgeship would. For an excellent review of these issues, consult Jeffrey Stempel, *Two Cheers for Specialization*, 61 BROOK. L. REV. 67 (1995).

Crafting appropriate responses for sex offenders is no easy task. As they are some of the most hated and reviled members of society, legislators (even those who are well-intentioned) fear opposing legislation targeting these offenders, regardless of how misguided the legislation may be. In the long run, however, well-informed and carefully crafted measures will prove more effective than impulsive, ill-conceived responses in reducing sex offenses.

Four principles should guide the development of these responses. First, sex offenders should be recognized to be a heterogeneous group, distinguishable by offense type and risk of re-offense. Second, the law should take into account new pharmacological therapies, such as testosterone-suppressing drugs, as well as other innovations and therapeutic approaches as a means of reducing the likelihood of future offenses.¹⁹⁰ Third, greater efforts should be made to promote offender reintegration into society, thereby improving their chances for successful treatment and diminishing the likelihood that they will reoffend. Fourth, it is critical to assess the effects of such legislation and to invest in research into the causes, treatment, and prevention of sexual violence.

By integrating law and therapeutic efforts, responses can be formulated that prevent future offenses and victimization, offer offenders and potential offenders the optimal opportunity to lead healthy, productive lives, and decrease the cost of sexual offending to society. By implementing the recommendations described above, society can move one step closer to these goals.

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¹⁹⁰ These therapies are not cure-alls. They must be used appropriately, as discussed in this article and in the medical literature.

www.latimes.com/news/opinion/la-op-krueger11mar11,0,2986016.story?coll=la-opinion-center

The new American witch hunt

Demonizing sex offenders by passing tough, mindless laws rather than treating them makes little sense.

by Richard B. Krueger

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INCREASINGLY, legislation dealing with sex offenders is being passed that is punitive, untested, expensive and, in many cases, counterproductive — demonizing people who commit sexual offenses without offering any empirical information that the new laws will reduce sexually violent crime.

Last week, for instance, New York became the 19th state to enact so-called sexually violent predator legislation. This legislation provides for the definite "civil commitment" of sexual offenders who have served their time in prison and are about to be released.

The legislation was passed despite a lack of evidence that such laws actually reduce sexual violence and despite recent reports of warehousing and chaos in some programs and relentlessly rising costs in others.

This is just one example of the kind of punitive laws being passed across the country. Other measures include increasingly strict residency restrictions (such as those imposed by Proposition 83 in California, approved by the voters in November), more stringent rules for community notification regarding sexual offenders and monitoring by GPS (also mandated under Proposition 83, with cost projections of \$100 million annually, according to the state's legislative analyst).

In many states, politicians are eager to pass such legislation, which is enthusiastically supported by the public. Indeed, ask citizens what they want and you're likely to hear that they support laws to "get rid of perverts" who, in the eyes of many people, "deserve what they get."

It's not new. In general, dispassionate discussion of sexuality is difficult, even more so when it comes to sexual crimes. Ebbs and flows of public attention and vilification have often occurred in this country.

In the 1930s and '40s, castration was practiced in California, where sex offenders and homosexuals received this "treatment." Also, the first generation of sexual psychopath laws was passed during this time, mandating indefinite commitment for sexually violent predators. In the 1980s, society was roiled by a series of high-profile day-care-center abuse cases (such as the McMartin case and others that proved later to be unfounded). In the 1990s, there was a media uproar over supposed "ritualistic" and "satanic" sexual abuse.

These days, the pendulum continues to swing further toward the punitive end of the spectrum, with ever more draconian sentencing and post-release conditions. Under the federal Adam Walsh Child Protection Act, signed into law by President Bush in July, all sex offenders will be listed on the Internet, making information on offenders, regardless of whether they belong to a low-, medium- or high-risk category, publicly accessible; it also includes people, for example, whose only crime is the possession of child pornography.

Obviously, this makes it increasingly difficult for ex-offenders to obtain residences or jobs — the mainstays of stability — and it subjects them to going vigilantism and public censure. Although notification may make sense for some, it does not make sense for all.

In California, the most recent debate has been over whether Proposition 83, the law passed last year banning registered sex offenders from living within 2,000 feet of a school or park, can be retroactively applied to the 90,000 offenders who have already been released from prison. (Two federal judges ruled last month that it may not.)

What is being created is a class of individuals that is progressively demonized by society and treated in such a way that a meaningful integration into society is impossible.

Sex, sexual abuse is a serious matter. Yes, individuals who commit sexual crimes should be punished. Unquestionably, a small percentage of sex offenders are very dangerous and must be removed from society. What's more, we know that sexual crimes are devastating to victims and their families and that we must do all we can to protect ourselves from "predators."

Demonizing people rather than treating them makes little sense, and passing laws that are tough but mindless in response to political pressure solve the problem either.

The reality is that, despite the popular perception to the contrary, recidivism rates for sexual offenders are among the lowest of any class of criminals. What's more, 90% of sex offenders in prison will eventually be released back into the community — and 90% of sexual offenses are

mitted by people known to their victim, such as family members or trusted members of the community — so rehabilitation is critical. It is not possible, affordable, constitutional or reasonable to lock up all sex offenders all of the time.

ty's efforts to segregate sex offenders are backfiring, resulting in unintended consequences. Homelessness is increasing among sex offenders, making it harder to monitor them and causing some law enforcement officials to call for a repeal of residency restrictions.

the greatest challenges to workable civil commitment programs is that offenders are so feared that, when they are ready to be reintroduced to society, no community will accept them — so instead they remain institutionalized indefinitely, creating ever-increasing costs without an end in sight.

Why has this demonization occurred? One reason is that offenders are hot news, and the more heinous the sexual crime, the more the media focus on it. Thus, our minds create a stereotype of egregious evil with respect to all sex offenders. We no longer distinguish between the most egregious crimes and the others, despite the fact that the most terrible crimes represent only a small proportion of all sexual offenses.

There are less serious crimes, and we should acknowledge that. Possession of child pornography is categorically different from a sexual assault. So is exhibitionism. The wife of a man who committed a hands-off crime involving possession of child pornography put it this way: "Each of these horrendous crimes drives another nail into our coffin."

Another reason for the demonization is that society has failed to fund research on the treatment and management of people convicted of sexual crimes — despite the fact that states are willing to spend hundreds of millions of dollars on unproven programs for treatment and containment.

The current public discourse on sex offenders is, therefore, without a base of empirical studies. Psychiatry, psychology and our national research institutes have eschewed involvement with such research.

No one is suggesting that sexual crimes should go unpunished or that some of the newer approaches — such as medication, intensive community supervision or even carefully considered civil commitment — are without value. What is becoming clearer, however, is that the climate in the United States makes reasonable discussion difficult.

What can be done? Some scholars, in an effort to interpose rationality between public fear and legislation, have suggested the concept of "evidence-based legislation." This is analogous to "evidence-based medicine" and would call on legislative bodies to inform their proposed laws with the best available scientific evidence — something that is rarely done now.

What is happening now with individuals who have committed sexual crimes is the modern-day equivalent of a witch hunt. Our images of the offenders determine what we mete out to all sex offenders. It is time to reexamine our approaches and develop empirically based, scientifically sound policies and treatments to bring rationality back to this discussion.

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STATIC-99 Coding Rules

Revised - 2003

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STATIQUE-99 Règles de codage révisées – 2003**

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How To Use This Manual

In most cases, scoring a STATIC-99 is fairly straightforward for an experienced evaluator. If you are unfamiliar with this instrument we suggest that you turn to the back pages of this manual and find the one-page STATIC-99 Coding Form. You may want to keep a copy of this to one side as you review the manual.

We strongly recommend that you read pages 3 to 21 and the section "Scoring the STATIC-99 and Computing the Risk Estimates" before you score the STATIC-99. These pages explain the nature of the STATIC-99 as a risk assessment instrument; to whom this risk assessment instrument may be applied; the role of self-report; exceptions for juvenile, developmentally delayed, and institutionalized offenders; changes from the last version of the STATIC-99 coding rules; the information required to score the STATIC-99; and important definitions such as "Index Offence", Category "A" offences versus Category "B" offences, "Index Cluster", and "Pseudo-recidivism".

Individual item coding instructions begin at the section entitled "Scoring the Ten Items". For each of the ten items, the coding instructions begin with three pieces of information: **The Basic Principle**, **Information Required to Score this Item**, and **The Basic Rule**. In most cases, just reading these three small sections will allow you to score that item on the STATIC-99. Should you be unsure of how to score the item you may read further and consider whether any of the special circumstances or exclusions apply to your case. This manual contains much information that is related to specific uses of the STATIC-99 in unusual circumstances and many sections of this manual need only be referred to in exceptional circumstances.

We also suggest that you briefly review the ten appendices as they contain valuable information on adjusting STATIC-99 predictions for time free in the community, a self-test of basic concepts, references, surgical castration, a table for converting raw STATIC-99 scores to risk estimates, the coding forms, a suggested report format for communicating STATIC-99-based risk information, a list of replication studies for the STATIC-99, information on inter-rater reliability and, how to interpret Static-99 scores greater than 6.

We appreciate all feedback on the scoring and implementation of the STATIC-99. Please feel free to contact any of the authours. Should you find any errors in this publication or have questions/concerns regarding the application of this risk assessment instrument or the contents of this manual, please address these concerns to:

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Introduction

The Nature of the STATIC-99

The STATIC-99 utilizes only static (unchangeable) factors that have been seen in the literature to correlate with sexual reconviction in adult males. The estimates of sexual and violent recidivism produced by the STATIC-99 can be thought of as a baseline of risk for violent and sexual reconviction. From this baseline of long-term risk assessment, treatment and supervision strategies can be put in place to reduce the risk of sexual recidivism.

The STATIC-99 was developed by R. Karl Hanson, Ph.D. of the Solicitor General Canada and David Thornton, Ph.D., at that time, of Her Majesty's Prison Service, England. The STATIC-99 was created by amalgamating two risk assessment instruments. The RRASOR (Rapid Risk Assessment of Sex Offender Recidivism), developed by Dr. Hanson, consists of four items: 1) having prior sex offences, 2) having a male victim, 3) having an unrelated victim, and 4) being between the ages of 18 and 25 years old. The items of the RRASOR were then combined with the items of the Structured Anchored Clinical Judgement – Minimum (SACJ-Min), an independently created risk assessment instrument written by Dr. Thornton (Grubin, 1998). The SACJ-Min consists of nine items: 1) having a current sex offence, 2) prior sex offences, 3) a current conviction for non-sexual violence, 4) a prior conviction for non-sexual violence, 5) having 4 or more previous sentencing dates on the criminal record, 6) being single, 7) having non-contact sexual offences, 8) having stranger victims, and 9) having male victims. These two instruments were merged to create the STATIC-99, a ten-item prediction scale.

The strengths of the STATIC-99 are that it uses risk factors that have been empirically shown to be associated with sexual recidivism and the STATIC-99 gives explicit rules for combining these factors into a total risk score. This instrument provides explicit probability estimates of sexual reconviction, is easily scored, and has been shown to be robustly predictive across several settings using a variety of samples. The weaknesses of the STATIC-99 are that it demonstrates only moderate predictive accuracy (ROC = .71) and that it does not include all the factors that might be included in a wide-ranging risk assessment (Doren, 2002).

While potentially useful, an interview with the offender is not necessary to score the STATIC-99.

The authors of this manual strongly recommend training in the use of the STATIC-99 before attempting risk assessments that may affect human lives. Researchers, parole and probation officers, psychologists, sex offender treatment providers, and police personnel involved in threat and risk assessment activities typically use this instrument. Researchers are invited to make use of this instrument for research purposes and this manual and the instrument itself may be downloaded from www.sgc.gc.ca.

It is possible to score more than six points on the STATIC-99 yet the top risk score is 6 (High-Risk). In analyzing the original samples it was found that there was no significant increase in recidivism rates for scores between 6 and 12. One of the reasons for this finding may be diminishing sample size. However, in general, the more risk factors, the more risk. There may be some saturation point after which additional factors do not appear to make a difference in risk. It is useful to keep in mind that all measurement activities contain some degree of error. If the offender's score is substantially above 6 (High-Risk), there is greater confidence the offender's "true" score is greater than 6 (High-Risk) than if the offender had only scored a 6.

The STATIC-99 does not address all relevant risk factors for sexual offenders. Consequently a prudent evaluator will always consider other external factors that may influence risk in either direction. An obvious example is where an offender states intentions to further harm or "get" his victims (higher risk).

Or, an offender may be somewhat restricted from further offending either by health concerns or where he has structured his environment such that his victim group is either unavailable or he is always in the company of someone who will support non-offending (lower risk). These additional risk factors should be stated in any report as "additional factors that were taken into consideration" and not "added" to the STATIC-99 Score. Adding additional factors to the STATIC-99, or adding "over-rides" distances STATIC-99 estimates from their empirical base and substantially reduces their predictive accuracy.

- **Missing Items** – The only item that may be omitted on the STATIC-99 is "Ever Lived With ..." (Item #2). If no information is available, this item should be scored as a "0" (zero) – as if the offender has lived with an intimate partner for two years.
- **Recidivism Criteria** – In the original STATIC-99 samples the recidivism criteria was a new conviction for a sexual offence.
- **Non-Contact Sexual Offences** – The original STATIC-99 samples included a small number of offenders who had been convicted of non-contact sexual offences. STATIC-99 predictions of risk are relevant for non-contact sexual offenders, such as Break-&Enter Fetishists who enter a dwelling to steal underwear or similar fetish objects.
- **RRASOR or STATIC-99?** On the whole, if the information is available to score the STATIC-99 it is preferable to use the STATIC-99 over the RRASOR as estimates based on the STATIC-99 utilize more information than those based upon RRASOR scores. The average predictiveness of the STATIC-99 is higher than the average predictiveness of the RRASOR (Hanson, Morton, & Harris, in press).

Recidivism Estimates and Treatment

The original samples and the recidivism estimates should be considered primarily as "untreated". The treatment provided in the Millbrook Recidivism Study and the Oak Ridge Division of the Penetanguishene Mental Health Centre samples were dated and appeared ineffective in the outcome evaluations. Most of the offenders in the Pinel sample did not complete the treatment program. Except for the occasional case, the offenders in the Her Majesty's Prison Service (UK) sample would not have received treatment.

Self-report and the STATIC-99

Ten items comprise the STATIC-99. The amount of self-report that is acceptable in the scoring of these questions differs across questions and across the three basic divisions within the instrument.

Demographic Questions: For Item #1 – Young, while it is always best to consult official written records, self-report of age is generally acceptable for offenders who are obviously older than 25 years of age. For Item #2 – Ever Lived With..., to complete this item the evaluator should make an attempt to confirm the offender's relationship history through collateral sources and official records. There may, however, be certain cases (immigrants, refugees from third world countries) where confirmation is not possible. In the absence of these sources self-report information may be utilized, assuming of course, that the self-report seems credible and reasonable to the evaluator. For further guidance on the use of self-report and the STATIC-99 please see section "Item #2 – Ever Lived with an Intimate Partner – 2 Years".

Criminal History Questions: For the five (5) items that assess criminal history (Items 3, 4, 5, 6, & 7) an official criminal history is required to score these items and self-report is not acceptable. This being said, there may be certain cases (immigrants, refugees from third world countries) where self-report of crimes may be accepted if it is reasonable to assume that no records exist or that existing records are truly un-retrievable. In addition, to the evaluator, the self-report must seem credible and reasonable.

Victim Questions: For the three (3) victim items self-report is generally acceptable assuming the self-report meets the basic criteria of appearing reasonable and credible. Confirmation from official records or collateral contacts is always preferable.

Who can you use the STATIC-99 on?

The STATIC-99 is an actuarial risk prediction instrument designed to estimate the probability of sexual and violent reconviction for adult males who have already been charged with or convicted of at least one sexual offence against a child or a non-consenting adult. This instrument may be used with first-time sexual offenders.

This instrument is not recommended for females, young offenders (those having an age of less than 18 years at time of release) or for offenders who have only been convicted of prostitution related offences, pimping, public toileting (sex in public locations with consenting adults) or possession of pornography/indecent materials. The STATIC-99 is not recommended for use with those who have never committed a sexual offence, nor is it recommended for making recommendations regarding the determination of guilt or innocence in those accused of a sexual offence. The STATIC-99 is not appropriate for individuals whose only sexual "crime" involves consenting sexual activity with a similar age peer (e.g., Statutory Rape {a U.S. charge} where the ages of the perpetrator and the victim are close and the sexual activity was consensual).

The STATIC-99 applies where there is reason to believe an actual sex offence has occurred with an identifiable victim. The offender need not have been convicted of the offence. The original samples used to create this instrument contained a number of individuals who had been found Not Guilty by Reason of Insanity and others who were convicted of non-sexual crimes, but in all cases these offenders had committed real sex crimes with identifiable victims. The STATIC-99 may be used with offenders who have committed sexual offences against animals.

In some cases, an evaluator may be faced with an offender who has had a substantial period at liberty in the community with opportunity to re-offend, but has not done so. In cases such as these, the risk of sexual re-offence probabilities produced by the STATIC-99 may not be reliable and adjustment should be considered (Please see Appendix #1).

STATIC-99 with Juvenile Offenders

It should be noted that there were people in the original STATIC-99 samples who had committed sexual offences as juveniles (under the age of 18 years) and who were released as adults. In some cases an assessment of STATIC-99 risk potential may be useful on an offender of this nature. If the juvenile offences occurred when the offender was 16 or 17 and the offences appear "adult" in nature (preferential sexual assault of a child, preferential rape type activities) – the STATIC-99 score is most likely of some utility in assessing overall risk.

Evaluations of juveniles based on the STATIC-99 must be interpreted with caution as there is a very real theoretical question about whether juvenile sex offending is the same phenomena as adult sex offending in terms of its underlying dynamics and our ability to affect change in the individual. In addition, the younger the juvenile offender is, the more important these questions become. In general, the research literature leads us to believe that adolescent sexual offenders are not necessarily younger versions of adult sexual offenders. Developmental, family, and social factors would be expected to impact on recidivism potential. We have reason to believe that people who commit sex offences only as children/young people are a different profile than adults who commit sexual offences. In cases such as these, we recommend that STATIC-99 scores be used with caution and only as part of a more wide-ranging assessment of sexual and criminal behaviour. A template for a standard, wide-ranging assessment can be found in the

Solicitor General Canada publication, Harris, A. J. R., (2001), High-Risk Offenders: A Handbook for Criminal Justice Professionals, Appendix "d" (Please see the references section).

At this time we are aware of a small study that looked at the predictiveness of the STATIC-99 with juveniles. This study suggested that the scale worked with juveniles; at least in the sense that there was an overall positive correlation between their score on the STATIC-99 and their recidivism rate. This Texas study (Poole et al., 2000) focused on older juveniles who were 19 when released but younger when they offended.

In certain cases, the STATIC-99 may be useful with juvenile sexual offenders, if used cautiously. There would be reasonable confidence in the instrument where the convictions are related to offenses committed at the age of 17. In general, the younger the child, the more caution should be exercised in basing decisions upon STATIC-99 estimates. For example, if a 17-year-old offender committed a rape, alone, on a stranger female, you would have reasonable confidence in the STATIC-99 estimates. On the other hand, if the offender is now an adult (18+ years old) and the last sexual offence occurred when that individual was 14 or 15, STATIC-99 estimates would not apply. If the sexual offences occurred at a younger age and they look "juvenile" (participant in anti-social behaviour towards peers that had a sexual component) we would recommend that the evaluator revert to risk scales specifically designed for adolescent sexual offenders, such as the ERASOR (Worling, 2001).

The largest category of juvenile sexual offenders is generally antisocial youth who sexually victimize a peer when they are 13 or 14 years of age. These juvenile sexual offenders are most likely sufficiently different from adult sexual offenders that we do not recommend the use of the STATIC-99 nor any other actuarial instruments developed on samples of adult sexual offenders. We would once again refer evaluators to the ERASOR (Worling, 2001).

When scoring the STATIC-99, Juvenile offences when they are known from official sources, count as charges and convictions on "Prior Sexual Offences" regardless of the present age of the offender. Self-reported juvenile offences in the absence of official records do not count.

STATIC-99 with Juvenile Offenders who have been in prison for a long time

In this section we consider juvenile offenders who have been in prison for extended periods (20 years plus) and who are now being considered for release. In one recent case a male juvenile offender had committed all of his offences prior to the age of 15. This individual is now 36 years old and has spent more than 20 years incarcerated for these offences. The original STATIC-99 samples contained some offenders who committed their sexual offences as juveniles and were released as adults. However, most of these offenders were in the 18 – 20 age group upon release. Very few, if any, would have served long sentences for offences committed as juveniles. Although cases such as these do not technically violate the sampling frame of the STATIC-99, such cases would have been sufficiently rare that it is reasonable for evaluators to use more caution than usual in the interpretation of STATIC-99 reconviction probabilities.

STATIC-99 with Offenders who are Developmentally Delayed

The original STATIC-99 samples contained a number of Developmentally Delayed offenders. Presently, research is ongoing to validate the STATIC-99 on samples of Developmentally Delayed offenders. Available evidence to date supports the utility of actuarial approaches with Developmentally Delayed offenders. There is no current basis for rejecting actuarials with this population.

STATIC-99 with Institutionalized Offenders

The STATIC-99 is intended for use with individuals who have been charged with, or convicted of, at least one sexual offence. Occasionally, however, there are cases where an offender is institutionalized for a non-sex offence but, once incarcerated, engages in sexual assault or sexually aggressive behaviour that is sufficiently intrusive to come to official notice. In certain of these cases charges are unlikely, e.g., the offender is a "lifer". If no sanction is applied to the offender, these offences are not counted. If the behaviour is sufficiently intrusive that it would most likely attract a criminal charge had the behaviour occurred in the community and the offender received some form of "in-house" sanction, (administrative segregation, punitive solitary confinement, moved between prisons or units, etc.), these offences would count as offences on the STATIC-99. If that behaviour were a sexual crime, this would create a new Index sexual offence. However, if no sanction is noted for these behaviours they cannot be used in scoring the STATIC-99.

The STATIC-99 may be appropriate for offenders with a history of sexual offences but currently serving a sentence for a non-sexual offence. The STATIC-99 should be scored with the most recent sexual offence as the Index offence. The STATIC-99 is not applicable to offenders who have had more than 10 years at liberty in the community without a sexual offence before they were arrested for their current offence. STATIC-99 risk estimates would generally apply to offenders that had between two (2) and ten (10) years at liberty in the community without a new sexual offence but are currently serving a new sentence for a new technical (fail to comply) or other minor non-violent offence (shoplifting, Break and Enter). Where an offender did have a prolonged (two to ten years) sex-offence-free period in the community prior to their current non-sexual offence, the STATIC-99 estimates would be adjusted for time free using the chart in Appendix One – "Adjustments in risk based on time free".

Adjusted crime-free rates only apply to offenders who have been without a new sexual or violent offence. Criminal misbehaviour such as threats, robberies, and assaults void any credit the offender may have for remaining free of additional sexual offences.

STATIC-99 with Black, Aboriginal, and members of other Ethnic/Social Groups

Most members of the original samples from which recidivism estimates were obtained were white. However, race has not been found to be a significant predictor of sexual offence recidivism. It is possible that race interacts with STATIC-99 scores, but such interactions between race and actuarial rates are rare. It has been shown that the SIR Scale works as well for Aboriginal offenders as it does for non-aboriginal offenders (Hann et al., 1993). The LSI-R has been shown to work as well for non-white offenders as it does for white offenders (Lowenkamp et al., 2001) and as well for aboriginal offenders as it does for non-aboriginal offenders (Bonta, 1989). In Canada there is some evidence that STATIC-99 works as well for Aboriginal sexual offenders as it does for whites (Nicholaichuk, 2001). At this time, there is no reason to believe that the STATIC-99 is culturally specific.

STATIC-99 and Offenders with Mental Health Issues

The original STATIC-99 samples contained significant numbers of individual offenders with mental health concerns. It is appropriate to use the STATIC-99 to assess individuals with mental health issues such as schizophrenia and mood disorders.

STATIC-99 and Gender Transformation

Use of the STATIC-99 is only recommended, at this time, for use with adult males. In the case of an offender in gender transformation the evaluator would score that person based upon their anatomical sex at the time their first sexual offence was committed.

What's New? What's Changed?

Since the last version of the Coding Rules

The most obvious change in the layout of the STATIC-99 is the slight modification of three of the items to make them more understandable. In addition, the order in which the items appear on the Coding Form has been changed. It is important to remember that no item definitions have been changed and no items have been added or subtracted. Present changes reflect the need for a clearer statement of the intent of the items as the use of the instrument moves primarily from the hands of researchers and academics into the hands of primary service providers such as, parole and probation officers, psychologists, psychometrists and others who use the instrument in applied settings. The revised order of questions more closely resembles the order in which relevant information comes across the desk of these individuals.

The first item name that has been changed is the old item #10, Single. The name of this item has been changed to "Ever lived with an intimate partner – 2 years" and this item becomes item number 2 in the revised scale. The reason for this change is that the new item name more closely reflects the intent of the item, whether the offender has ever been capable of living in an intimate relationship with another adult for two years.

The two Non-sexual violence items, "Index Non-sexual violence" and "Prior non-sexual violence" have been changed slightly to make it easier to remember that a conviction is necessary in order to score these items. These two items become "Index Non-sexual violence – Any convictions?" and "Prior Non-sexual violence – Any convictions?" in the new scheme.

Over time, there have been some changes to the rules from the previous version of the coding rules. Some rules were originally written to apply to a specific jurisdiction. In consultation with other jurisdictions, the rules have been generalized to make them applicable across jurisdictions in a way that preserves the original intent of the item. These minor changes are most evident in Item #6 – Prior Sentencing Dates.

Over the past two years, a large number of direct service providers have been trained in the administration of the STATIC-99. The training of direct service providers has revealed to us that two related concepts must be clearly defined for the evaluator. These concepts are "Pseudo-recidivism" and "Index cluster". Pseudo-recidivism results when an offender who is currently engaged in the criminal justice process has additional charges laid against them for crimes they committed before they were apprehended for the current offence. Since these earlier crimes have never been detected or dealt with by the justice system they are "brought forward" and grouped with the Index offence. When, for the purposes of scoring the STATIC-99, these offences join the "Index Offence" this means there are crimes from two, or more, distinct time periods included as the "Index". This grouping of offences is known as an "Index Cluster". These offences are not counted as "priors" because, even though the behaviour occurred a long time ago, these offences have never been subject to a legal consequence.

Finally, there is a new section on adjusting the score of the STATIC-99 to account for offenders who have not re-offended for several years. There is reason to downgrade risk status for the offender who has not re-offended in the community over a protracted period (See Appendix One).

Information Required to Score the STATIC-99

Three basic types of information are required to score the STATIC-99, Demographic information, an official Criminal Record, and Victim information.

Demographic Information

Two of the STATIC-99 items require demographic information. The first item is "Young?". The offender's date of birth is required in order to determine whether the offender is between 18 and 25 years of age at the time of release or at time of exposure to risk in the community. The second item that requires knowledge of demographic information is "Ever lived with an intimate partner – 2 years?". To answer this question the evaluator must know if the offender has ever lived in an intimate (sexual) relationship with another adult, continuously, for at least two years.

Official Criminal Record

In order to score the STATIC-99, the evaluator must have access to an official criminal record as recorded by police, court, or correctional officials. From this official criminal record you score five of the STATIC-99's items: "Index non-sexual violence – Any convictions", "Prior non-sexual violence – Any convictions", "Prior sex offences", "Prior sentencing dates", and "Non-contact sex offences – Any convictions". Self-report is generally not acceptable to score these five items – in the Introduction section, see sub-section – "Self-report and the STATIC-99".

Victim Information

The STATIC-99 contains three victim information items "Any unrelated victims", "Any stranger victims" and, "Any male victims". To score these items the evaluator may use any credible information at their disposal except polygraph examination. For each of the offender's sexual offences the evaluator must know the pre-offence degree of relationship between the victim and the offender.

Definitions

Sexual Offence

For the purposes of a STATIC-99 assessment a sexual offence is an officially recorded sexual misbehaviour or criminal behaviour with sexual intent. To be considered a sexual offence the sexual misbehaviour must result in some form of criminal justice intervention or official sanction. For people already engaged in the criminal justice system the sexual misbehaviour must be serious enough that individuals could be charged with a sexual offence if they were not already under legal sanction. **Do not count offences such as failure to register as a sexual offender or consenting sex in prison.**

Criminal justice interventions may include the following:

- Alternative resolutions agreements (Restorative Justice)
- Arrests
- Charges
- Community-based Justice Committee Agreements
- Criminal convictions
- Institutional rule violations for sexual offences (Do not count consenting sexual activity in prison)
- Parole and probation violations

Sanctions may include the following:

- Alternative resolution agreements
- Community supervision
- Conditional discharges
- Fines
- Imprisonment
- Loss of institutional time credits due to sexual offending ("worktime credits")

Generally, "worktime credit" or "institutional time credits" means credit towards (time off) a prisoner's sentence for satisfactory performance in work, training or education programs. Any prisoner who accumulates "worktime credit" may be denied or may forfeit the credit for failure or refusal to perform assigned, ordered, or directed work or for receiving a serious disciplinary offense.

Sexual offences are scored only from official records and both juvenile and adult offences count. You may not count self-reported offences except under certain limited circumstances, please refer to the Introduction section – sub-section "Self-report and the STATIC-99".

An offence need not be called "sexual" in its legal title or definition for a charge or conviction to be considered a sexual offence. Charges or convictions that are explicitly for sexual assaults, or for the sexual abuse of children, are counted as sexual offenses on the STATIC-99, regardless of the offender's motive. Offenses that directly involve illegal sexual behaviour are counted as sex offenses even when the legal process has led to a "non-sexual" charge or conviction. An example of this would be where an offender is charged with or pleads guilty to a Break and Enter when he was really going in to steal dirty underwear to use for fetishistic purposes.

In addition, offenses that involve non-sexual behavior are counted as sexual offenses if they had a sexual motive. For example, consider the case of a man who strangles a woman to death as part of a sexual act but only gets charged with manslaughter. In this case the manslaughter charge would still be considered a sexual offence. Similarly, a man who strangles a woman to gain sexual compliance but only gets charged

with Assault; this Assault charge would still be considered a sexual offence. Further examples of this kind include convictions for murder where there was a sexual component to the crime (perhaps a rape preceding the killing), kidnapping where the kidnapping took place but the planned sexual assault was interrupted before it could occur, and assaults "pled down" from sexual assaults.

Physical assaults, threats, and stalking motivated by sexual jealousy do not count as sexual offenses when scoring the STATIC-99.

Additional Charges

Offences that may not be specifically sexual in nature, occurring at the same time as the sexual offence, and under certain conditions, may be considered part of the sexual misbehaviour. Examples of this would include an offender being charged with/convicted of:

- Sexual assault (rape) and false imprisonment
- Sexual assault (rape) and kidnapping
- Sexual assault (rape) and battery

In instances such as these, depending upon when in the court process the risk assessment was completed, the offender would be coded as having been convicted of two sexual offences plus scoring in another item (Index or Prior Non-sexual Violence). For example if an offender were convicted of any of the three examples above prior to the current "Index" offence, the offender would score 2 "prior" sex offence charges and 2 "prior" sex offence convictions (On Item #5 – Prior Sexual Offences) and a point for Prior Non-sexual Violence (Please see "Prior Non-sexual Violence" or "Index Non-sexual Violence" for a further explanation).

Category "A" and Category "B" Offences

For the purposes of the STATIC-99, sexual misbehaviours are divided into two categories. Category "A" involves most criminal charges that we generally consider "sexual offences" and that involve an identifiable child or non-consenting adult victim. This category includes all contact offences, exhibitionism, voyeurism, sex with animals and dead bodies.

Category "B" offences include sexual behaviour that is illegal but the parties are consenting or no specific victim is involved. Category "B" offences include prostitution related offences, consenting sex in public places, and possession of pornography. Behaviours such as urinating in public or public nudity associated with mental impairment are also considered Category "B" offences.

Rule: if the offender has any category "A" offences on their record - all category "B" offences should be counted as sex offences for the purpose of scoring sexual priors or identifying the Index offense. They do not count for the purpose of scoring victim type items. The STATIC-99 is not recommended for use with offenders who have only category "B" offences.

Offence names and legalities differ from jurisdiction to jurisdiction and a given sexual behaviour may be associated with a different charge in a different jurisdiction. The following is a list of offences that would typically be considered sexual. Other offence names may qualify when they denote sexual intent or sexual misbehaviour.

Category "A" Offences

- Aggravated Sexual Assault
- Attempted sexual offences (Attempted Rape, Attempted Sexual Assault)
- Contributing to the delinquency of a minor (where the offence had a sexual element)
- Exhibitionism

- Incest
- Indecent exposure
- Invitation to sexual touching
- Lewd or lascivious acts with a child under 14
- Manufacturing/Creating child pornography where an identifiable child victim was used in the process (The offender had to be present or participate in the creation of the child pornography with a human child present)
- Molest children
- Oral copulation
- Penetration with a foreign object
- Rape (includes in concert) (Rape in concert is rape with one or more co-offenders. The co-offender can actually perpetrate a sexual crime or be involved to hold the victim down)
- Sexual Assault
- Sexual Assault Causing Bodily Harm
- Sexual battery
- Sexual homicide
- Sexual offences against animals (Bestiality)
- Sexual offences involving dead bodies (Offering an indignity to a dead body)
- Sodomy (includes in concert and with a person under 14 years of age)
- Unlawful sexual intercourse with a minor
- Voyeuristic activity (Trespass by night)

Category "B" Offences

- Consenting sex with other adults in public places
- Crimes relating to child pornography (possession, selling, transporting, creating where only pre-existing images are used, digital creation of)
- Indecent behaviour without a sexual motive (e.g., urinating in public)
- Offering prostitution services
- Pimping/Pandering
- Seeking/hiring prostitutes
- Solicitation of a prostitute

Certain sexual behaviours may be illegal in some jurisdictions and legal in others (e.g., prostitution). Count only those sexual misbehaviours that are illegal in the jurisdiction in which the risk assessment takes place and in the jurisdiction where the acts took place.

Exclusions

The following offences would not normally be considered sexual offences

- Annoying children
- Consensual sexual activity in prison (except if sufficiently indiscreet to meet criteria for gross indecency).
- Failure to register as a sex offender
- Being in the presence of children, loitering at schools
- Possession of children's clothing, pictures, toys
- Stalking (unless sexual offence appears imminent, please see definition of "Truly Imminent" below)
- Reports to child protection services (without charges)

Rule: Simple questioning by police not leading to an arrest or charge is insufficient to count as a sexual offence.

Probation, Parole or Conditional Release Violations as Sexual Offences

Rule: Probation, parole or conditional release violations resulting in arrest or revocation/breach are considered sexual offences when the behaviour could have resulted in a charge/conviction for a sexual offence if the offender were not already under legal sanction.

Sometimes the violations are not clearly defined as a sexual arrest or conviction. The determination of whether to count probation, parole, or conditional release violations as sexual offences is dependent upon the nature of the sexual misbehaviour. Some probation, parole and conditional release violations are clearly of a sexual nature, such as when a rape or a child molestation has taken place or when behaviours such as exhibitionism or possession of child pornography have occurred. These violations would count as the Index offence if they were the offender's most recent criminal justice intervention.

Generally, violations due to "high-risk" behaviour would not be considered sex offences. The most common of these occurs when the offender has a condition not to be in the presence of children but is nevertheless charged with a breach - being in the presence of children. A breach of this nature would not be considered a sexual offence. This is a technical violation. The issue that determines if a violation of conditional release is a new sex offence or not is whether a person who has never been convicted of a sex offence could be charged and convicted of the breach behaviour. A person who has never faced criminal sanction could not be charged with being in the presence of minors; hence, because a non-criminal could not be charged with this offence, it is a technical violation. Non-sexual probation, parole and conditional release violations, and charges and convictions such as property offences or drug offences are not counted as sexual offences, even when they occur at the same time as sexual offences.

Taking the above into consideration, some high-risk behaviour may count as a sexual offence if the risk for sexual offence recidivism was truly imminent and an offence failed to occur only due to chance factors, such as detection by the supervision officer or resistance of the victim.

Definition of "Truly Imminent"

Examples of this nature would include an individual with a history of child molesting being discovered alone with a child and about to engage in a "wrestling game." Another example would be an individual with a long history of abducting teenage girls for sexual assault being apprehended while attempting to lure teenage girls into his car.

Institutional Rule Violations

Institutional rule violations resulting in institutional punishment can be counted as sex offences if certain conditions exist. The first condition is that the sexual behaviour would have to be sufficiently intrusive that a charge for a sexual offence would be possible were the offender not already under legal sanction. In other words, "if he did it on the outside would he get charged for it?" Institutional Disciplinary Reports for sexual misbehaviours that would likely result in a charge were the offender not already in custody count as charges. Poorly timed or insensitive homosexual advances would not count even though this type of behaviour might attract institutional sanctions. The second condition is that the evaluator must be sure that the sexual assaults actually occurred and the institutional punishment was for the sexual behaviour.

In a prison environment it is important to distinguish between targeted activity and non-targeted activity. Institutional disciplinary reports that result from an offender who specifically chooses a female officer and masturbates in front of her, where she is the obvious and intended target of the act, would count as a

“charge” and hence, could stand as an Index offence. The alternative situation is where an offender who is masturbating in his cell is discovered by a female officer and she is not an obvious and intended target. In some jurisdictions this would lead to a Disciplinary Report. Violations of this “non-targeted” nature do not count as a “charge” and could not stand as an Index offence. If the evaluator has insufficient information to distinguish between these two types of occurrences the offender gets the benefit of the doubt and the evaluator would not score these occurrences. A further important distinction is whether the masturbation takes place covered or uncovered. Masturbating under a sheet would not be regarded as an attempt at indecent exposure.

Consider these two examples:

- (1) A prisoner is masturbating under a sheet at a time when staff would not normally look in his cell. Unexpectedly a female member of staff opens the observation window, looks through the door, and observes him masturbating. This would not count as a sex offence for the purposes of STATIC-99, even if a disciplinary charge resulted.
- (2) In the alternate example, a prisoner masturbates uncovered so that his erect penis is visible to anyone who looks in his cell. Prison staff have reason to believe that he listens for the lighter footsteps of a female guard approaching his cell. He times himself so that he is exposed in this fashion at the point that a female guard is looking into the cell. This would count as a sexual offence for the purposes of scoring STATIC-99 if it resulted in an institutional punishment.

Rule: Prison Misconducts and Institutional Rule Violations for Sexual Misbehaviours count as one charge per sentence

Prison misconducts for sexual misbehaviours count as one charge per sentence, even when there are multiple incidents. The reason for this is that in some jurisdictions the threshold for misconducts is very low. Often, as previously described, misconduct will involve a female guard simply looking into a cell and observing an inmate masturbating. Even in prison, serious sexual offences, rape and attempted rape will generally attract official criminal charges.

Mentally Disordered and Developmentally Delayed Offenders

Some offenders suffer from sufficient mental impairment (major mental illness, developmental delays) that criminal justice intervention is unlikely. For these offenders, informal hearings and sanctions such as placement in treatment facilities and residential moves would be counted as both a charge and a conviction for a sexual offence.

Clergy and the Military

For members of the military or religious groups (clergy) (and similar professions) some movements within their own organizations can count as charges and convictions and hence, Index offences. The offender has to receive some form of official sanction in order for it to count as a conviction. An example of this would be the “de-frocking” of a priest or minister or being publicly denounced. Another example would be where an offender is transferred within the organization and the receiving institution knows they are receiving a sex offender. If this institution considers it part of their mandate to address the offender’s problem or attempt to help him with his problem then this would function as equivalent to being sent to a correctional institution, and would count as a conviction and could be used as an Index Offence.

For members of the military, a religious group (clergy) or teachers (and similar professions) being transferred to a new parish/school/post or being sent to graduate school for re-training does not count as a conviction and cannot be used as an Index Offence.

Juveniles

Instances in which juveniles (ages 12–15) are placed into residential care for sexual aggression would count as a charge and conviction for a sexual offence. In jurisdictions where 16 and 17 year old sexual offenders remain in a juvenile justice system (not charged, tried, and sent to jail as adults are), where it is possible to be sent to a “home” or “placement”, this would count as a charge and a conviction for a sexual offence. In jurisdictions where juveniles aged 16 and 17 are charged, convicted, sentenced, and jailed much like adults, juvenile charges and convictions (between ages 16 & 17) would be counted the same as adult charges and convictions.

Sexual misbehaviour of children 11 or under would not count as a sex offence unless it resulted in official charges.

Official Cautions – United Kingdom

In the United Kingdom, an official caution should be treated as equivalent to a charge and a conviction.

Similar Fact Crimes

An Offender assaults three different women on three different occasions. On the first two occasions he grabs the woman as she is walking past a wooded area, drags her into the bushes and rapes her. For this he is convicted twice of Sexual Assault (rape). In the third case he grabs the woman, starts to drag her into the bushes but she is so resistant that he beats her severely and leaves her. In this case he is convicted of Aggravated Assault. In order for the conviction to be counted as a sexual offence, it must have a sexual motivation. In a case like this it is reasonable to assume that the Aggravated Assault had a sexual motivation because it resembles the other sexual offences so closely. In the absence of any other indication to the contrary this Aggravated Assault would also be counted as a sexual offence. Note: This crime could also count as Non-sexual Violence.

Please also read subsection “Coding Crime Sprees” in section “Item #5 – Prior Sex Offences”.

Index offence

The Index offence is generally the most recent sexual offence. It could be a charge, arrest, conviction, or rule violation (see definition of a sexual offence, earlier in this section). Sometimes Index offences include multiple counts, multiple victims, and numerous crimes perpetrated at different times because the offender may not have been detected and apprehended. Some offenders are apprehended after a spree of offending. If this results in a single conviction regardless of the number of counts, all counts are considered part of the Index offence. Convictions for sexual offences that are subsequently overturned on appeal can count as the Index offence. Charges for sexual offences can count as the Index Offence, even if the offender is later acquitted.

Most of the STATIC-99 sample (about 70%) had no prior sexual offences on their record; their Index offence was their first recorded sexual misbehaviour. As a result, the STATIC-99 is valid with offenders facing their first sexual charges.

Acquittals

Acquittals count as charges and can be used as the Index Offence.

Convictions Overturned on Appeal

Convictions that are subsequently overturned on appeal can count as an Index Offence.

"Detected" by Child Protection Services

Being "detected" by the Children's Aid Society or other Child Protection Services does not count as an official sanction; it may not stand as a charge or a conviction. This is insufficient to create a new Index Offence.

Revocation of Conditional Release for "Lifers", Dangerous Offenders, and Others with Indeterminate Sentences – As an Index Offence

Occasionally, offenders on conditional release in the community who have a life sentence, who have been designated as Dangerous Offenders (Canada C.C.C. Sec. 753) or other offenders with indeterminate sentences either commit a new offence or breach their release conditions while in the community. Sometimes, when this happens the offenders have their conditional releases revoked and are simply returned to prison rather than being charged with a new offence or violation. Generally, this is done to save time and court resources as these offenders are already under sentence.

If a "lifer", Dangerous Offender, or other offender with an already imposed indeterminate sentence is simply revoked (returned to prison from conditional release in the community without trial) for a sexual behaviour this can serve as the Index Sexual Offence if the behaviour is of such gravity that a person not already involved with the criminal justice system would most likely be charged with a sexual criminal offence given the same behaviour. Note: the evaluator should be sure that were this offender not already under sanction that it is highly likely that a sexual offence charge would be laid by police.

Historical Offences

The evaluator may face a situation where an offender is brought before the court on a series of sexual offences, all of which happened several years in the past. This most often occurs when an offender has offended against children in the past and as these children mature they come forward and charge the perpetrator. After the first charge is laid it is not unusual for other victims to appear and lay subsequent charges. The evaluator may be faced with an offender with multiple charges, multiple court dates, and possibly multiple convictions who has never before been to court – or who has never before been sanctioned for sexual misbehaviour. In a case like this, where the offender is before the court for the first time, all of the charges, court appearances and convictions become what is known as an "Index Cluster" and they are all counted as part of the Index Offence.

Index Cluster

An offender may commit a number of sexual offences in different jurisdictions, over a protracted period, in a spree of offending prior to being detected or arrested. Even though the offender may have a number of sentencing dates in different jurisdictions, the subsequent charges and convictions would constitute an "Index Cluster". These "spree" offences would group together – the early ones would not be considered "priors" and the last, the "Index", they all become the "Index Cluster". This is because the offender has not been "caught" and sanctioned for the earlier offences and then "chosen" to re-offend in spite of the sanction. Furthermore, historical offences that are detected after the offender is convicted of a more recent sexual offence would be considered part of the Index offence (pseudo-recidivism) and become part of the Index Cluster (See subsequent section).

For two offences to be considered separate offences, the second offence must have been committed after the offender was detected and detained and/or sanctioned for the previous offence. For example, an offence committed while an offender was released on bail for a previous sexual offence would supersede

the previous charge and become the Index offence. This is because the offender knew he/she had been detected for their previous crimes but chose to re-offend anyway.

An Index cluster can occur in three ways.

The first occurs when an offender commits multiple offences at the same time and these offences are then subsequently dealt with as a group by the police and the courts.

The second occurs when an Index offence has been identified for an offender and following this the evaluator becomes aware of previous historical offences for which the offender has never previously been charged or convicted. These previous offences come forward and become part of the "Index Cluster". This is also known as "Pseudo-recidivism". It is important to remember, these historical charges do not count as "priors" because the offending behaviour was not consequenced before the offender committed the Index offence. The issue being, the offender has not been previously sanctioned for his behaviour and then made the choice to re-offend.

The third situation arises when an offender is charged with several offences that come to trial within a short period of time (a month or so). When the criminal record is reviewed it appears that a cluster of charges were laid at the end of an investigation and that the court could not attend to all of these charges in one sitting day. When the evaluator sees groups of charges where it appears that a lot of offending has finally "caught up" with an offender – these can be considered a "cluster". If these charges happen to be the last charges they become an Index Cluster. The evaluator would not count the last court day as the "Index" and the earlier ones as "priors". A second example of this occurs when an offender goes on a crime "spree" – the offender repeatedly offends over time, but is not detected or caught. Eventually, after two or more crimes, the offender is detected, charged, and goes to court. But he has not been independently sanctioned between the multiple offences.

For Example: An offender commits a rape, is apprehended, charged, and released on bail. Very shortly after his release, he commits another rape, is apprehended and charged. Because the offender was apprehended and charged between crimes this does not qualify as a crime "spree" – these charges and possible eventual convictions would be considered separate crimes. If these charges were the last sexual offences on the offender's record – the second charge would become the Index and the first charge would become a "Prior".

However, if an offender commits a rape in January, another in March, another in May, and another in July and is finally caught and charged for all four in August this constitutes a crime "spree" because he was not detected or consequenced between these crimes. As such, this spree of sexual offences, were they the most recent sexual offences on the offenders record, would be considered an "Index Cluster" and all four rape offences would count as "Index" not just the last one.

Pseudo-recidivism

Pseudo-recidivism occurs when an offender currently involved in the criminal justice process is charged with old offences for which they have never before been charged. This occurs most commonly with sexual offenders when public notoriety or media publicity surrounding their trial or release leads other victims of past offences to come forward and lay new charges. Because the offender has not been charged or consequenced for these misbehaviours previously, they have not experienced a legal consequence and then chosen to re-offend.

For Example: Mr. Jones was convicted in 1998 of three sexual assaults of children. These sexual assaults took place in the 1970's. As a result of the publicity surrounding Mr. Jones' possible release in 2002, two more victims, now adults, come forward and lay new charges in 2002. These offences also took place in the 1970's but these victims did not come forward until 2002. Because Mr. Jones

had never been sanctioned for these offences they were not on his record when he was convicted in 1998. Offences for which the offender has never been sanctioned that come to light once the offender is in the judicial process are considered "pseudo-recidivism" and are counted as part of the "Index Cluster". Historical charges of this nature are not counted as "priors".

The basic concept is that the offender has to be sanctioned for previous mis-behaviours and then "chose" to ignore that sanction and re-offend anyway. If he chooses to re-offend after a sanction then he creates a new offence and this offence is considered part of the record, usually a new Index offence. If historical offences come to light, for which the offender has never been sanctioned, once the offender is in the system for another sexual offence, these offences "come forward" and join the Index Offence to form an "Index Cluster".

Post-Index Offences

Offences that occur after the Index offence do not count for STATIC-99 purposes. Post-Index sexual offences create a new Index offence. Post-Index violent offences should be considered "external" risk factors and would be included separately in any report about the offender's behaviour.

For Example, Post-Index Sexual Offences: Consider a case where an offender commits a sexual offence, is apprehended, charged, and released on bail. You are assigned to evaluate this offender but before you can complete your evaluation he commits another sexual offence, is apprehended and charged. Because the offender was apprehended, charged, and released this does not qualify as a crime "spree". He chose to re-offend in spite of knowing that he was under legal sanction. These new charges and possible eventual convictions would be considered a separate crime. In a situation of this nature the new charges would create a new sexual offence and become the new Index offence. If these charges happened to be the last sexual offences on the offender's record – the most recent charges would become the Index and the charge on which he was first released on bail would become a "Prior" Sexual Offence.

For Example, Post-Index Violent Offences: Consider a case where an offender in prison on a sexual offence commits and is convicted of a serious violent offence. This violent offence would not be scored on either Item #3 (Index Non-sexual Violence convictions) or Item #4 (Prior Non-sexual Violence convictions) but would be referred to separately, as an "external risk factor", outside the context of the STATIC-99 assessment, in any subsequent report on the offender.

Prior Offence(s)

A prior offence is any sexual or non-sexual crime, institutional rule violation, probation, parole or conditional release violation(s) and/or arrest charge(s) or, conviction(s), that was legally dealt with PRIOR to the Index offence. This includes both juvenile and adult offences. In general, to count as a prior, the sanction imposed for the prior offence must have occurred before the Index offence was committed. However, if the offender was aware that they were under some form of legal restraint and then goes out and re-offends in spite of this restriction, the new offence(s) would create a new Index offence. An example of this could be where an offender is charged with "Sexual Communication with a Person Under the Age of 14 Years" and is then released on his own recognizance with a promise to appear or where they are charged and released on bail. In both of these cases if the offender then committed an "Invitation to Sexual Touching" after being charged and released the "Invitation to Sexual Touching" would become the new Index offence and the "Sexual Communication with a Person Under the Age of 14 Years" would automatically become a "Prior" sexual offence.

In order to count violations of conditional release as "Priors" they must be "real crimes", something that someone not already engaged in the criminal justice system could be charged with. Technical violations such as Being in the Presence of Minors or Drinking Prohibitions do not count.

Scoring the 10 Items

Item # 1 - Young

The Basic Principle: Research (Hanson, 2001) shows that sexual recidivism is more likely in an offender's early adult years than in an offender's later adult years. See Figure 1, next page.

Information Required to Score this Item: To complete this item the evaluator has to confirm the offender's birth date or have other knowledge of the offender's age.

The Basic Rule: If the offender is between his 18th and 25th birthday at exposure to risk you score the offender a "1" on this item. If the offender is past his 25th birthday at exposure to risk you score the offender a "0" on this item.

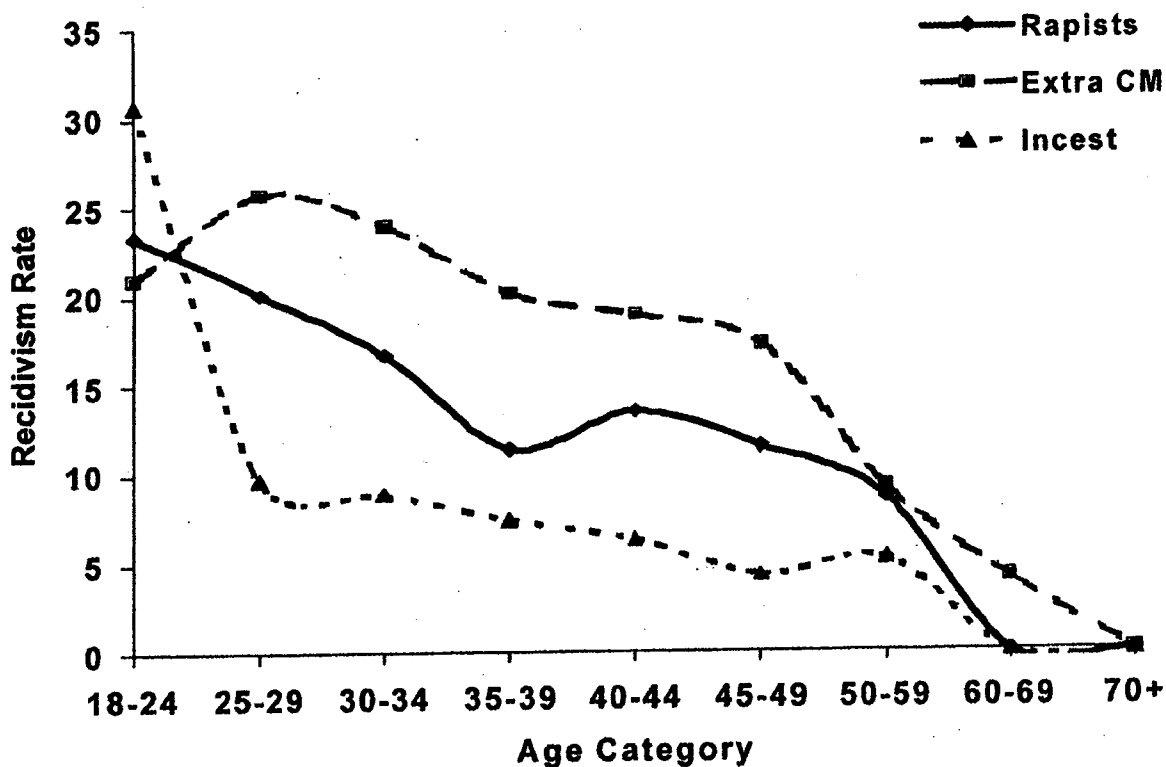
STATIC-99 is not intended for those who are less than 18 years old at the time of exposure to risk.

Under certain conditions, such as anticipated release from custody, the evaluator may be interested in an estimate of the offender's risk at some specific point in the future. This may occur if the offender is presently incarcerated (January) and you are interested in his risk when he is eligible for release in September. However, you know that the offender's 25th birthday will occur in May. If you were assessing the offender's estimated risk of re-offence for his possible release in September – because at time of exposure to risk he is past his 25th birthday – you would not give the risk point for being less-than-25 even though he is only 24 today. You calculate risk based upon age at exposure to risk.

Sometimes the point at which an offender will be exposed to risk may be uncertain, for example, if he is eligible for parole but may not get it. In these cases it may be appropriate to use some form of conditional wording indicating how his risk assessment would change according to when he is released.

Figure 1

Age Distribution of Sexual Recidivism in Sexual Offenders



Rapists (n = 1,133)

Extra-familial Child Molesters [Extra CM] (n = 1,411)

Incest Offenders (n = 1,207)

Hanson, R. K. (2002). Recidivism and age: Follow-up data on 4,673 sexual offenders. Journal of Interpersonal Violence, 17, 1046-1062.

Hanson, R. K. (2001). *Age and sexual recidivism: A comparison of rapists and child molesters*. User Report 2001-01. Ottawa: Department of the Solicitor General of Canada. Department of the Solicitor General of Canada website, www.sgc.gc.ca

Item # 2 – Ever Lived with an Intimate Partner – 2 Years

The Basic Principle: Research suggests that having a prolonged intimate connection to someone may be a protective factor against sexual re-offending. See Hanson and Bussière (1998), Table 1 – Items “Single (never married) and Married (currently)”. On the whole, we know that the relative risk to sexually re-offend is lower in men who have been able to form intimate partnerships.

Information Required to score this Item: To complete this item it is highly desirable that the evaluator confirm the offender’s relationship history through collateral sources or official records.

The Basic Rule: If the offender has never had an intimate adult relationship of two years duration you score the offender a “1” on this item. If the offender has had an intimate adult relationship of two years duration you score the offender a “0” on this item.

The intent of this item is to reflect whether the offender has the personality/psychological resources, as an adult, to establish a relatively stable “marriage-like” relationship with another person. It does not matter whether the intimate relationship was/is homosexual or heterosexual.

- **Missing Items** – The only item that may be omitted on the STATIC-99 is this one (Ever Lived With – Item #2). If no information is available this item should be scored a “0” (zero) – as if the offender has lived with an intimate partner for two years.
- To complete this item the evaluator should make an attempt to confirm the offender’s relationship history through collateral sources and official records. In the absence of these sources self-report information may be utilized, assuming of course, that the self-report seems credible and reasonable to the evaluator. There may be certain cases (immigrants, refugees from third world countries) where it is not possible to access collaterals or official records. Where the evaluator, based upon the balance of probabilities, is convinced this person has lived with an intimate partner for two years the evaluator may score this item a “0”. It is greatly preferred that you confirm the existence of this relationship through collateral contacts or official records. This should certainly be done if the assessment is being carried out in an adversarial context where the offender would have a real motive to pretend to a non-existent relationship.
- In cases where confirmation of relationship history is not possible or feasible the evaluator may choose to score this item both ways and report the difference in risk estimate in their final report.

If a person has been incarcerated most of their life or is still quite young and has not had the opportunity to establish an intimate relationship of two years duration, they are still scored as never having lived with an intimate partner for two years. They score a “1”. There are two reasons for this. The first being, this was the way this item was scored in the original samples and to change this definition now would distance the resulting recidivism estimates from those validated on the STATIC-99. Secondly, having been part of, or experienced, a sustained relationship may well be a protective factor for sexual offending. As a result, the reason why this protective factor is absent is immaterial to the issue of risk itself.

The offender is given a point for this item if he has never lived with an adult lover (male or female) for at least two years. An adult is an individual who is over the age of consent to marriage. The period of co-habitation must be continuous with the same person.

Generally, relationships with adult victims do not count. However, if the offender and the victim had two years of intimate relationship before the sexual offences occurred then this relationship would count, and the offender would score a “0” on this item. However, if the sexual abuse started before the offender and the victim had been living together in an intimate relationship for two years then the relationship would not count regardless of its length.

Cases where the offender has lived over two years with a child victim in a "lover" relationship do not count as living with an intimate partner and the offender would be scored a "1" on this item. Illegal relationships (Incestuous relationship with his Mother) and live-in relationships with "once child" victims do not count as "living together" for the purposes of this item and once again the offender would score a "1" on this item. A "once child" victim is the situation where the offender abused a child but that victim is either still living, as an adult, in an intimate relationship with the offender or who has lived, as an adult, in an intimate relationship with the offender.

Exclusions

- Legal marriages involving less than two years of co-habitation do not count
- Male lovers in prison would not count
- Prison marriages (of any duration) where the offender is incarcerated during the term of the relationship do not count
- Illegal relationships, such as when the offender has had an incestuous relationship with his mother do not count
- Intimate relationships with non-human species do not count
- Relationships with victims do not count (see above for exception)
- Priests and others who for whatever reason have chosen, as a lifestyle, not to marry/co-habitate are still scored as having never lived with an intimate partner

Extended Absences

In some jurisdictions it is common for an offender to be away from the marital/family home for extended periods. The offender is generally working on oilrigs, fishing boats, bush camps, military assignment, or other venues of this nature. While the risk assessment instrument requires the intimate co-habitation to be continuous there is room for discretion. If the offender has an identifiable "home" that he/she shares with a lover and the intimate relationship is longer than two years, the evaluator should look at the nature and consistency of the relationship. The evaluator should attempt to determine, in spite of these prolonged absences, whether this relationship looks like an honest attempt at a long-term committed relationship and not just a relationship of convenience.

If this relationship looks like an honest attempt at a long-term committed relationship then the evaluator would score the offender a "0" on this item as this would be seen as an intimate relationship of greater than two years duration. If the evaluator thinks that the relationship is a relationship of convenience, the offender would score a "1". If the living together relationship is of long duration (three plus years) then the periods of absence can be fairly substantial (four months in a logging camp/oil rig, or six months or more on military assignment).

Item # 3 – Index Non-sexual Violence (NSV) – Any Convictions

The Basic Principle: A meta-analytic review of the literature indicates that having a history of violence is a predictive factor for future violence. See Hanson and Bussière (1998), Table 2 – Item “Prior Violent Offences”. The presence of non-sexual violence predicts the seriousness of damage were a re-offence to occur and is strongly indicative of whether overt violence will occur (Hanson & Bussière, 1998). This item was included in the STATIC-99 because in the original samples this item demonstrated a small positive relationship with sexual recidivism (Hanson & Thornton, unpublished data).

In English data, convictions for non-sexual violence were specifically predictive of rape (forced sexual penetration) rather than all kinds of sexual offenses (Thornton & Travers, 1991). In some English data sets this item has also been predictive of reconviction for any sex offense.

Information Required to Score this Item: To score this item the evaluator must have access to an official criminal record as compiled by police, court, or correctional authorities. Self-report of criminal convictions may not be used to score this item except in specific rare situations, please see sub-section “Self-report and the STATIC-99” in the Introduction section.

The Basic Rule: If the offender’s criminal record shows a separate conviction for a non-sexual violent offence at the same time they were convicted of their Index Offence, you score the offender a “1” on this item. If the offender’s criminal record does not show a separate conviction for a non-sexual violent offence at the same time they were convicted of their Index Offence, you score the offender a “0” on this item.

This item refers to convictions for non-sexual violence that are dealt with on the same sentencing occasion as the Index sex offence. A separate Non-sexual violence conviction is required to score this item. These convictions can involve the same victim as the Index sex offence or they can involve a different victim. All non-sexual violence convictions are included, providing they were dealt with on the same sentencing occasion as the Index sex offence(s).

Both adult and juvenile convictions count in this section. In cases where a juvenile is not charged with a violent offence but is moved to a secure or more secure residential placement as the result of a non-sexually violent incident, this counts as a conviction for Non-sexual Violence.

Included are:

- Aggravated Assault
- Arson
- Assault
- Assault causing bodily harm
- Assault Peace/Police Officer
- Attempted Abduction
- Attempted Robbery
- False Imprisonment
- Felonious Assault
- Forcible Confinement
- Give Noxious Substance (alcohol, narcotics, or other stupeficient in order to impair a victim)
- Grand Theft Person (“Grand Theft Person” is a variation on Robbery and may be counted as Non-sexual violence)
- Juvenile Non-sexual Violence convictions count on this item
- Kidnapping
- Murder

- “PINS” Petition (Person in need of supervision) There have been cases where a juvenile has been removed from his home by judicial action under a “PINS” petition due to violent actions. This would count as a conviction for Non-sexual violence.
- Robbery
- Threatening
- Using/pointing a weapon/firearm in the commission of an offence
- Violation of a Domestic Violence Order (Restraining Order) (a conviction for)
- Wounding

Note: If the conviction was “Battery” or “Assault” and the evaluator knew that there was a sexual component, this would count as a sexual offence and as a Non-sexual Violence offence.

Excluded are:

- Arrest/charges do not count
- Convictions overturned on appeal do not count
- Non-sexual violence that occurs after the Index offence does not count
- Institutional rules violations cannot count as Non-sexual Violence convictions
- Do not count driving accidents or convictions for Negligence causing Death or Injury

Weapons offences

Weapons offences do not count unless the weapon was used in the commission of a violent or a sexual offence. For example, an offender might be charged with a sexual offence and then in a search of the offenders home the police discover a loaded firearm. As a result, the offender is convicted, in addition to the sexual offence, of unsafe weapons storage. This would not count as a conviction for non-sexual violence as the weapons were not used in the commission of a violent or sexual offence.

A conviction for Possession of a firearm or Possession of a firearm without a licence would generally not count as a non-sexual violent offence. A conviction for Pointing a firearm would generally count as non-sexual violence as long as the weapon was used to threaten or gain victim compliance. Intent to harm or menace the victim with the weapon must be present in order to score a point on this item.

Resisting arrest

“Resisting Arrest” does not count as non-sexual violence. In Canadian law this charge could apply to individuals who run from an officer or who hold onto a lamppost to delay arrest. If an offender fights back he will generally be charged with “Assault a Peace/Police Officer” which would count as non-sexual violence.

Convictions that are coded as only “sexual”

- Sexual Assault, Sexual Assault with a Weapon, Aggravated Sexual Assault, and Sexual Assault Causing Bodily Harm are not coded separately as Non-sexual Violence – these convictions are simply coded as sexual
- Assault with Intent to Commit Rape (U.S. Charge) – A conviction under this charge is scored as only a sex offence – Do not code as Non-sexual Violence
- Convictions for “Sexual Battery” (U.S. Charge) – A conviction under this charge is scored as only a sex offence – Do not code as Non-sexual Violence

Situations where points are scored both for a “Sexual Offence” and a Non-sexual Violence offence

An offender may initially be charged with one count of sexual assault of a child but plea-bargains this down to one Forcible Confinement and one Physical Assault of a Child. In this instance, both offences

would be considered sexual offences (they could be used as an "Index" offence or could be used as "priors" if appropriate) as well; a risk point would be given for non-sexual violence.

If you have an individual convicted of Kidnapping/Forcible Confinement (or a similar offence) and it is known, based on the balance of probabilities, this was a sexual offence - this offence may count as the "Index" sexual offence or you may score this conviction as a sexual offence under Prior Sexual Offences, whichever is appropriate given the circumstances.

For Example

| Criminal Record for Joe Smith | | | |
|---|----------------------|----------------------|---|
| Date | Charge | Conviction | Sentence |
| July 2000 | Forcible Confinement | Forcible Confinement | 20 Months incarceration and 3 years probation |
| If the evaluator knows that the behaviour was sexual this conviction for Forcible Confinement would count as One Sexual Offence (either for "priors" or an "Index") and One Non-sexual Violence (either "prior" or "Index") | | | |

However, were you to see the following:

| Criminal Record for Joe Smith | | | |
|---|--|--|---|
| Date | Charge | Conviction | Sentence |
| July 2000 | 1) Forcible Confinement 2) Sexual Assault | 1) Forcible Confinement 2) Sexual Assault | 20 Months incarceration and 3 years probation |
| If the evaluator knows that the Forcible Confinement was part of the sexual offence this situation would count as Two Sexual Offences (either for "priors" or an "Index") and One Non-sexual Violence (either "prior" or "Index") | | | |

Military

If an "undesirable discharge" is given to a member of the military as the direct result of a violent offence (striking an officer, or the like) this would count as a Non-sexual Violence conviction and as a sentencing date (Item #6). However, if the member left the military when he normally would have and the "undesirable discharge" is equivalent to a bad job reference, this offence would not count as Non-sexual Violence or as a Sentencing Date.

Murder – With a sexual component

A sexual murderer who only gets convicted of murder would get one risk point for Non-sexual violence, but this murder would also count as a sexual offence.

Revocation of Conditional Release for "Lifers", Dangerous Offenders, and Others with Indeterminate Sentences

If a "lifer", Dangerous Offender, or other offender with an already imposed indeterminate sentence is simply revoked (returned to prison from conditional release in the community without trial) for a sexual behaviour that would generally attract a sexual charge if the offender were not already under sanction and at the same time this same offender committed a violent act sufficient that it would generally attract a

This report identifies three parties that need to be addressed in order to achieve greater child protection:

- **the public** – who protect the children in their care and are in a position to prevent harm and to work with the authorities to expose offending where it is taking place. It is important that parents and carers are equipped with the information and understanding needed to protect children;
- **offenders** and those concerned about their sexual behaviour – who in addition to punishment need to understand the gravity of their actions, accept responsibility for what they have done, and undergo treatment as well as legal controls over their future behaviour where necessary; and
- **the authorities** – who can further improve the management of known offenders through ensuring the provision of effective monitoring and housing. **Technology** can play an important role in enabling the authorities to improve the monitoring of sex offenders.

The focus of this review is on how child sex offenders are managed and how sexual offending against children can be prevented. For this reason, it does not directly address victim support. However, support for victims is, of course, a vitally important part of the response to child sex offending, and the Home Office is taking forward a range of work to improve services for victims. Over the last three years, the Home Office has supported services by, for example:

- extending the network of Sexual Assault Referral Centres – this work will continue into 2007/08;
- supporting voluntary sector counselling services for victims of sexual violence through the Victims Fund; and
- funding, training and evaluating independent sexual violence advisers, who provide advocacy and support to victims delivered by a number of different agencies.

The report refers on many occasions to child sex offenders. For the avoidance of any confusion, that wording refers to people who commit sex offences against children, not to young sex offenders. However, sex offences committed by young people are also a significant problem addressed in this report.

Background – what has been done so far?

Serious child sex offenders should be in custody for as long as they present a severe risk to the public. Those offenders who present a sufficiently lowered risk to be released safely should be effectively monitored and managed in the community. If their risk levels increase, tough enforcement should be in place to return them to prison to prevent them committing a further offence.

Over the last decade, the Government has made a number of significant improvements to the systems that protect the public from child sex offenders (see page 8 for a summary). These new measures have moved us from a system where there were no formalised arrangements for managing child sex offenders when they were released from prison, to one that is regarded as among the most effective in the world.

Offenders are managed under multi-agency arrangements, known as Multi-Agency Public Protection Arrangements, primarily involving the police, probation and prison services. Sentences can be served both in prison and on licence in the community, and any prison sentence of 12 months or more will involve a period of both. Release from the custodial part of the sentence is either at a point specified by law or decided by the independent Parole Board. Offenders serving life sentences, or one of the new indeterminate sentences we have introduced for dangerous offenders, will not be released until the Parole Board considers it safe to do so.

When an offender is serving part of a sentence on licence in the community, they are supervised by the probation service and must comply with a range of conditions designed to support rehabilitation and reduce the risk of re-offending. These may, for example, include requirements to attend treatment courses, to reside at a hostel, not to have contact with children or not to enter a particular area. If an offender breaches any of the conditions of their licence, or takes any action that increases their risk of re-offending, they may be recalled to prison for the remainder of their sentence.

Notification requirements provide the authorities with an additional means to continue protecting the public from sex offenders after they have completed their sentence. The Sex Offenders' Register requires offenders to provide details of their whereabouts to the police on a regular basis once they are out of prison. This helps the authorities keep track of sex offenders and effectively monitor their risk.

Some offenders may also be subject to a Sexual Offences Prevention Order, which prohibits certain activities, for example going near schools or playgrounds. There are also robust systems in place for vetting people seeking to work with children and barring all those who have convictions for sex offences from doing so.

Figures show that re-conviction among sex offenders is low (less than 0.5 per cent of medium to high-risk managed offenders committed serious further offences last year). But we recognise there is no room for complacency as reporting is low – any child sex offence has a terrible impact on the victim, their family and the wider community. The public is understandably concerned about every child sex offender and the risk they may pose when released from prison. Although a comprehensive set of arrangements exists, we recognise that this is not a perfect system and can be improved.

Strengthening public protection: recent changes

- The **Sex Offenders' Register** was established under the Sex Offenders Act 1997 and is an invaluable way for the police to keep track of the whereabouts of known offenders. The Association of Chief Police Officers has assessed compliance with the requirements by sex offenders as 97 per cent.
- Established by the Criminal Justice and Court Services Act 2000, **Multi-Agency Public Protection Arrangements (MAPPA)** place a legal duty on the relevant authorities to work in partnership and share information to manage high-risk offenders in the community. The level of public protection from such offenders has increased considerably, and the number of serious further offences committed by MAPPA-managed offenders is very low.
- The Criminal Justice Act 2003 introduced sentences to protect the public from dangerous violent or sex offenders:
 - **Extended sentences** – offenders will serve the usual term in prison but will have an extended licence period of up to eight years.
 - **Indeterminate public protection sentences** – offenders will not be released until their level of risk is manageable in the community. They will then be on licence for a minimum of 10 years and must apply again to the Parole Board for their licence to be removed.
- The Sexual Offences Act 2003 introduced the **Sexual Offences Prevention Order (SOPO)**, which can impose prohibitions on sex offenders who pose a risk of serious sexual harm. For example, a SOPO could be used to prohibit an offender from being alone with children under 16. It is a criminal offence to breach these prohibitions, punishable by up to five years' imprisonment. The Act also introduced Risk of Sexual Harm Orders, restricting those who have not committed sex offences but are at risk of doing so, and Foreign Travel Orders banning travel abroad.
- **Local Safeguarding Children Boards (LSCBs)** were established by the Children Act 2004. A range of organisations in each local area, including the police, local authority, social and health services, have a legal duty to work together to safeguard and promote the welfare of children in that area. LSCBs play a key role in ensuring local agencies work together to prevent abuse and neglect, proactively targeting particular groups that are vulnerable, for example to sexual violence or exploitation, identify abuse and neglect where they occur and take action to protect children who are suffering or at risk of suffering.
- The **Child Exploitation and Online Protection (CEOP) Centre** was set up in April 2006. Affiliated to the Serious Organised Crime Agency and with powers under the Serious Organised Crime and Police Act 2005, CEOP employs police officers with specialist experience of tracking and prosecuting sex offenders, professionals from child protection charities and secondments from key IT providers. CEOP works closely with the police and has a national remit to gather and co-ordinate intelligence on high-risk child sex offenders, to reduce the harm caused to children and to support operations against child sex offenders.
- The **Violent Crime Reduction Act 2006** included law changes that give the police powers of entry and search when visiting the homes of registered sex offenders, for the purpose of assessing risk. (The police already had powers of entry if they believe a crime may have taken place.)
- The **Safeguarding Vulnerable Groups Act 2006** provides for the creation of a **new vetting and barring scheme** for all those working with children and vulnerable adults. An independent statutory body will be created to use its expertise to take all discretionary decisions as to those individuals who should be barred from working with children and/or vulnerable adults. All those working closely with these groups will be required to be centrally vetted, and employers will need to check their status in the scheme. The new scheme is expected to be rolled out from Autumn 2008. It will integrate List 99, the Protection of Children Act list and the Disqualification Order regime into a single list of people barred from working with children. There will be a separate, but aligned, list of people barred from working with vulnerable adults.

Equipping the public with the information and understanding needed to protect children

During the review, those involved in protecting children stressed the importance of public involvement in enhancing child protection. We need to give the public the means to fulfil this role, and we need to achieve a culture change whereby the relationship between the police and the public is more open, with information being shared in both directions.

Part of this process will be to provide general information to the public about how offenders are managed and how we can protect our children. Part of it will also involve sharing, or disclosing, information about specific sex offenders who may pose a threat to particular children. But the police will maintain discretion over who will be given this information.

COMMUNICATING GENERAL INFORMATION

There is already a lot of information available from the Government and child protection organisations on protecting children from sexual abuse, but we need to do more to make the public aware of how child sex offenders are managed. Some people believe that sex

offenders are unsupervised once released from prison, with no restrictions on their behaviour and nothing to prevent them committing further offences. This false perception of unmanaged sex offenders adds to the anxiety that parents and carers feel about the safety of their children.

We need to ensure information about child protection and risk awareness is reaching the people who need it. Although public concern has focused on predatory stranger sex offences, at least 75 per cent of child sex offenders are in fact related or known to their victim.⁵ Enabling the public to accept and react appropriately to difficult messages like this requires excellent communication between public protection experts and communities. Helping parents have an open and honest relationship with their children, and be more alert to any warning signs of abuse, will enable them to protect their children better from all sex offenders – both the convicted, managed sex offenders and those who have not yet been detected.

ACTION 1

Pilot a community awareness programme, in partnership with non-governmental organisations, to provide better child protection advice and develop messages to help parents and carers safeguard children effectively

- to equip parents with the knowledge required to safeguard their children.

ACTION 2

Increase public awareness of how sex offenders are managed in the community, by ensuring easy-to-use information is widely available, and by ensuring strong local communication of MAPPA's work

- to reassure the public that protection arrangements are in place, and to ensure a transparent system operates in which the public is fully aware of the true level of risk.

⁵ Grubin, D, *Sex: offending against children: Understanding the risk*, Police Research Series Paper 99, Home Office, 1998.

SHARING SPECIFIC INFORMATION

More information can and should be placed in the public domain as long as it can be shown, in every case, that sharing the information enhances public protection.

There have been calls from some groups for the public to have direct, uncontrolled access to information about specific sex offenders living in their area. This would be similar to the US system under 'Megan's Law'. Others have expressed concern that such a law could be counter-productive and hinder child protection, as uncontrolled access to information could lead to offenders going 'underground'. We have examined the options and the experiences of child protection professionals in the US, and have considered what increases child protection in the US model and what has a negative impact.

'Megan's Law' was introduced in the US in 1996 and requires individual states to keep a register of offenders convicted of sex crimes against children, and to make private and personal information about registered sex offenders available to the public. Information may include their name, address and photograph. Individual states can decide how they implement 'Megan's Law', but all states proactively advise members of local communities about the presence of some sex offenders, and all states operate websites on which members of the public can search for known sex offenders living in their area.

When considering this kind of information disclosure, it is important to remember that it only applies to offenders who have committed an offence and have been convicted of it. Disclosure about known, convicted offenders does not remove the need for public engagement to protect children from new and unknown offenders.

Under existing MAPPA guidance, the police in England and Wales already disclose information about registered sex offenders in a controlled way. The police disclose information to a variety of people, including head teachers, leisure centre managers, employers and

landlords, as well as parents. However, the extent to which information is disclosed and the way decisions are recorded varies from area to area.

In addition to disclosure under MAPPA guidance, the website operated by the Child Exploitation and Online Protection (CEOP) Centre (www.ceop.gov.uk) publishes details of high-risk offenders who have gone missing.

There is a risk, which is supported by evidence from the US, that if offenders' details were automatically made available to all members of the public, a proportion would no longer comply with the notification requirements and could disappear, leaving the authorities unsure of their whereabouts and unable to monitor them. Also, some US states have a high proportion of offenders registering as 'homeless', suggesting that they either are not being truthful with the authorities or are choosing to live rough to avoid having their whereabouts published. In either case, the risk they pose increases considerably.

The aim of sharing information about offenders must always be to provide greater protection to children. High levels of non-compliance with the notification requirements would make it harder for authorities to manage offenders, and would therefore increase the risk to children. Public disclosure of non-compliant offenders' details, as on the CEOP website, is helpful, however, as it reinforces the offender's need to comply with notification requirements, and helps the police find them and take further action if they do not.

There also needs to be a responsibility on the person receiving the information to use it solely for the purpose of child protection. It should not be used to facilitate vigilante activity, or to attack or harass offenders.

Greater use should be made of controlled disclosure of information about child sex offenders to those who need to know, for example a single mother who might be sharing a home with a registered offender. We will introduce a new legal duty on the responsible authorities to consider disclosure in every case. This process should

be formalised and auditable, with clear guidance to ensure it is a consistent and accountable part of the MAPPA process.

Disclosure should be a two-way process. The police will continue to proactively disclose information where appropriate and members of the public will share information with them. The public will be able to register an interest in someone with whom they have a personal relationship and who has regular unsupervised access to their children in a private context. The police will then establish whether that individual has any convictions for child sex offences, and, if so, whether they present a risk

of serious harm to the children of the member of the public who registered the interest. If they are considered to pose a risk, the presumption will be that the police will disclose that information to the member of the public.

This model would offer the advantage of bringing to light intelligence about risk that would not otherwise have been available to the authorities. Anyone providing false information in registering their interest, or misusing any information disclosed, for example by engaging in vigilantism or the harassment of sex offenders, would be subject to police action.

ACTION 3

Introduce a legal duty for MAPPA authorities to consider the disclosure of information about convicted child sex offenders to members of the public in all cases. The presumption will be that the authorities will disclose information if they consider that an offender presents a risk of serious harm to a member of the public's children.

ACTION 4

Pilot a process where members of the public can register their child protection interest in a named individual. Where this individual has convictions for child sex offences and is considered a risk, there will be a presumption that this information will be disclosed to the relevant member of the public.

We want to pilot the new policy in order to work through the details of implementation and to ensure we have a system of two-way disclosure that is as effective as possible without increasing the risk to children. It will be important for people who register an interest to receive a timely response. In all cases they should be given generic information on how best to protect their children. Following the pilot, we will consider whether this principle of two-way disclosure should be extended.

How this might work

Mr A, a 42-year-old man, was convicted in the early 1990s of a number of offences of indecent assault, relating to the abuse of a friend's young daughter who he was babysitting. He served his prison sentence and his time on licence without incident, and has had no further convictions. He is now living in the community and has not come to the attention of the police for any reason. Because he was convicted before the Sex Offenders Register was introduced, he is not subject to the notification requirements.

Miss B is a 30-year-old woman who lives on her own with her 5-year-old daughter. She recently met Mr A in a bar, and the couple have now formed a relationship. Mr A will regularly look after Miss B's daughter alone while she is out. Mr A has asked if he can move into Miss B's home.

Miss B is told by a friend that her new boyfriend is a convicted child sex offender. Miss B is understandably very concerned to hear this, although Mr A has given her no reason to believe his behaviour towards her daughter is inappropriate, and she doubts it is true. Miss B is also afraid to question Mr A about the rumours as, due to her previous abusive relationships, she is afraid of confrontation and fears she will be at risk of domestic violence. She approaches her local police force and registers her interest in Mr A, explaining her situation.

Police check whether Mr A has any previous convictions for child sex offences, and, on finding that he has, they refer the case to the local Multi-Agency Public Protection Arrangements (MAPPA).

At a multi-agency meeting, the MAPPA authorities discuss the case and consider whether Mr A's convictions should be disclosed to Miss B. They balance the fact that he has not been re-convicted, and has not come to the attention of the police for any reason since his first offences, against the similarities between his present domestic situation and the one in which he previously offended, the fact that the child is in the same age group as his previous victim, and the risk of serious harm to the child if he does re-offend.

Having considered the facts of the case, the MAPPA authorities conclude that the risk Mr A poses to Miss B's daughter is such that it is necessary to disclose his convictions to Miss B, so that Miss B is able to take the appropriate steps to protect her child. Social services will have been involved in the decision to disclose, and will then take the lead in any follow-up child protection work.

Minimising the risk to children posed by certain individuals through the provision of treatment

Child sex offenders vary greatly. Some understand that their actions and thoughts are wrong and take positive steps to change, but others are more challenging to deal with. Psychological treatment is one of the means available to us to manage the risk posed by sex offenders and to reduce re-offending, and this kind of treatment has been shown to be one of the most effective in addressing offending behaviour.⁶ Treatment of sex offenders involves helping the offender confront their criminal behaviour, take responsibility for their actions, and develop victim empathy. It also involves helping them learn to recognise and avoid risky situations where they are more likely to offend. The UK is seen as one of the world leaders in the field of sex offender treatment.

TREATING MORE OFFENDERS

The main treatment programmes in the UK are a suite of Sex Offender Treatment Programmes (SOTP), undertaken by offenders in prisons and on licence in the community. The target for sex offenders completing treatment in prison for 2006/07 is 1,240, and for offenders in the community is 1,200. We need to increase the number of offenders who receive treatment, and improve the quality of that treatment. We have reviewed the programme delivery and have considered where there are gaps, and where the system might be improved. We will also explore more methods to provide intensive treatment to certain highest risk sex offenders in the community.

Currently, not all sex offenders in prison undergo treatment. There are various reasons for this. For example, the offender may be serving a shorter sentence and may not be in prison for long enough to complete the SOTP course; they may deny their offence and therefore be unsuitable for the course; or they may refuse to attend. Young offenders who commit sexual crimes also do not all receive treatment at present, as there are no treatment programmes specifically aimed at young people. When developing our treatment programmes, we therefore need to look at how the risk these offenders present is affected by the lack of treatment. We also need to look at the treatment needs of the individuals in question, and to consider how we can better engage with these groups.

EARLY TREATMENT

Existing treatments are mostly for convicted offenders. Some people realise they are developing worrying sexual thoughts and behaviour towards children and want help before they go on to offend. There are a small but significant number of these potential offenders, and we should not wait until a crime has been committed before taking action. The Government has funded the Stop it Now! helpline, to which about 40 per cent of the 4,000 or so callers have been individuals concerned about their own behaviour and seeking help to deal with their own deviant sexual thoughts about children. It is in everyone's interests that we are able to prevent these people from becoming offenders.

ACTION 5

Provide early access to help for non-convicted individuals concerned about their sexual thoughts or behaviour, to prevent new or continued sexual abuse from occurring

- to prevent sexual abuse before it has started, and to provide interventions where risk is not already managed within the criminal justice system.

⁶ Losel, F and Schumucker, M, The effectiveness of treatment for sexual offenders: A comprehensive meta-analysis, *Journal of Experimental Criminology*, 2005, 1, 117-46.

IMPROVED TREATMENT

Current treatment takes a psychological approach, but we need to explore the use of drug treatment as well. This would involve using either hormonal medication to reduce an offender's sexual urges, or one of the newer antidepressant drugs (SSRIs), where early evidence of greater control of deviant urges is encouraging. This needs to happen in combination with psychological

treatment to help people understand their sexual thoughts and to challenge deviant thought processes. The advantage of this approach is that it would both reduce an offender's sexual urges and help them break the cycle of offending behaviour. However, there are side effects with any drug treatment, so such an approach is unlikely to be appropriate in all cases.

ACTION 6

Develop the use of drug treatment to support existing psychological treatment

- to reduce offenders' sexual urges through the use of medication, and to support them in successfully completing psychological treatment. In addition, we will explore intensive treatment options for those of greatest risk.

CIRCLES OF SUPPORT

Sex offenders are often very isolated individuals with poor social skills. Being alienated from mainstream society can increase the risk of them offending. In addition to treatment programmes, an initiative known as 'Circles of Support and Accountability' (CSA) has been running as a pilot project since 2001. CSA provide a group of four to six volunteers to act as a support network for socially isolated sex offenders in the community, particularly those with learning difficulties or personality disorders.

This approach has also been successfully used in Canada and is considered to be an innovative way of monitoring offenders. The results are encouraging. An evaluation of the programme in Canada found that only 5 per cent of offenders who had attended CSA went on to re-offend in

the next four years, compared with 17 per cent in a group that did not attend.⁷ The Home Office has provided funding for this programme in the UK.

MORE JOINED-UP TREATMENT

Some offenders do not begin treatment in prison, as they are not there long enough to finish the programme. We need to examine ways in which such offenders can begin treatment in prison and continue it in the community. The programmes run by the probation service for offenders in the community currently have a different structure, so an offender cannot continue the same course begun in prison. We will consider the feasibility of developing a joint prison and probation treatment programme. This approach may help more offenders access treatment, and would facilitate continuity between offender management in prison and in the community.

ACTION 7

Conduct a feasibility study of joint prison and probation treatments

- to ensure risk is reduced as much as possible during the time sex offenders are in prison and there is continuity between offender management in prison and in the community.

⁷ Wilson, R.J., Picheca, J.E. and Prinzo, M., *Circles of Support and Accountability: An evaluation of the pilot project in South-Central Ontario*, R-168, Correctional Service of Canada, 2005.

Maximising the effectiveness of the management of known sex offenders by the authorities

Offenders released from prison are much less likely to re-offend if managed by professionals than if left to their own devices. Effective management means ensuring all relevant authorities work together to make collective decisions about offenders and the level of risk they pose.

Multi-Agency Public Protection Arrangements (MAPPA) were introduced in 2001 and are a set of arrangements under which the prison, probation and police services (the 'responsible authorities') in all 42 MAPPA areas across England and Wales are legally required to share information and work together to assess and manage the risk posed by dangerous violent and sex offenders. A range of other agencies are also under a duty to co-operate, for example local government, health, Youth Offending Teams (YOTs) and housing services.

Information and intelligence about offenders who are subject to MAPPA, or who have been identified as posing a high risk of harm to the public, are stored on a computer database called ViSOR (Violent and Sex Offender Register). This system is being developed to support quick and easy sharing of information between the responsible authorities.

The offender management system uses various methods to assess the level of risk an offender poses. Police or probation officers visit offenders, and the information gathered is used to evaluate and re-evaluate their risk over time. Once a particular level of risk is identified, representatives from the relevant responsible authorities and 'duty to co-operate' agencies will regularly meet to discuss the case of the offender. These discussions will consider many areas of an offender's life, including their relationships, employment, housing, health, treatment and social activities. The disclosure of information to the public is also considered.

There are different ways in which the authorities can increase the level of monitoring of an offender. Registered sex offenders are required to provide personal information, including their address, on a regular basis.

There are also various civil orders available, prohibiting offenders from certain activities such as going near schools or travelling abroad. Finally, offenders on licence can be housed in supervised accommodation where they can be monitored daily.

Overall, those involved in public protection consider the MAPPA system to be very effective. In 2005/06, 13,783 high-risk sexual and violent offenders were referred to MAPPA, and 61 (0.44 per cent) of those offenders went on to commit a serious further offence.⁸ While we will never be able to eliminate entirely the risk of serious offences being committed, we want to do everything possible to reduce that risk further and to maintain the success we have achieved so far. There are a number of ways in which we can further improve the system.

STRUCTURAL AND MANAGEMENT IMPROVEMENTS TO THE MAPPA SYSTEM

The 42 MAPPA areas in England and Wales operate according to national guidance which explains the principles and activities of MAPPA. Local MAPPA areas have built up local practices and have developed different ways of tackling similar issues. This needs to be addressed to make practice more consistent across areas, and to enable the sharing of good practice. A consistent approach is necessary in order to build up a national picture of performance.

One way of achieving consistent practice between MAPPA areas is for them to put in place dedicated administrative support, and to follow the same administrative 'model'. This support could also act as the point of contact for public enquiries, and could help communicate the work of MAPPA to local communities.

Offenders are managed at three different levels under the MAPPA system, depending on their level of risk and the level of resources required to manage it. It is important to ensure these levels are being assigned in the same way across the country. Strong central co-ordination could help with this.

⁸ MAPPA, 2006 annual reports press release.

Another area that needs addressing is the recording of information on individual cases. At each Multi-Agency Public Protection Panel (MAPPP) meeting, intelligence about offenders is discussed and decisions are made about their management. However, there is a lack of consistency across MAPPA areas in what information should be recorded and stored on ViSOR. Dedicated administrative support, with consistent standards in minute taking and inputting data on ViSOR, and a supporting template for data gathering, would have many benefits. It would enable faster, more detailed and more consistent recording of information about offenders, thereby providing a larger, more reliable and more up-to-date intelligence database for the authorities. It would also remove some of the administrative burden from the front-line probation officers who currently undertake these duties.

PERFORMANCE MANAGEMENT

We need robust performance management arrangements for MAPPA, so that we can make proper comparisons on how each area is performing; for example, how quickly each MAPPA area recovers missing offenders, or recalls to prison offenders who are non-compliant. The new information gathered under the administrative model we are proposing will allow this kind of performance measurement and management.

LAY ADVISERS

When MAPPA were first created, there were calls for the public to have a direct role in the system of managing offenders. Lay advisers were introduced into MAPPA in 2003, and each MAPPA area has two lay advisers. However, their activities vary between MAPPA areas. Lay advisers form an essential link between the authorities and the public, and should play a key role in communication. We need a clearer definition of the lay adviser role, and to ensure it is applied across all areas.

CROSS-BORDER CASES

Sometimes an individual will commit an offence in a different jurisdiction of the UK from where they usually live. Someone who lives in England but commits an offence in Scotland, for example, will usually be sentenced and imprisoned there. On release from prison, it will often be considered appropriate to let them return to where they formerly lived, to encourage a more stable home life and so manage risk better. At present, there are insufficient guidelines and standard procedures for the handover of responsibility for these offenders between jurisdictions. We intend to review the processes and the relevant legislation and make changes as necessary.

ACTION 8

Develop national MAPPA structural and management arrangements to be applied in each area to ensure consistent, auditable processes

- to ensure best practice is followed consistently across the country and the public is consistently protected from sex offenders.

ACTION 9

Develop national standards for MAPPA and ensure each area has strong central co-ordination and administration and is able to provide a single point of contact for general public enquiries about the work of MAPPA, support the roll-out of VISOR, facilitate the duty to consider disclosure and support the key processes of risk assessment, recording of decisions and follow-up

- to ensure best practice is followed on risk assessment and there is a single point of contact for the general public.

ACTION 10

Develop robust performance management arrangements for MAPPA

- to ensure the performance of MAPPA can be monitored and managed, and to drive up standards.

ACTION 11

Establish a defined and consistent role for MAPPA lay advisers, which includes increasing public awareness

- to make the best use of the lay adviser role to increase public awareness and respond to public concern about child sex offenders.

ACTION 12

Develop the current process for managing cross-border MAPPA cases

- to improve the management of this group of offenders, and to ensure the public is consistently and effectively protected from them throughout the transfer process.

NOTIFICATION REQUIREMENTS

Sex offenders can be required by the courts to register their personal details with the police. Often referred to as the Sex Offenders' Register, this system requires offenders to provide their local police station with a record of their name, address, date of birth and National Insurance number. The register allows the police to keep track of the whereabouts of individual sex offenders. It is an invaluable tool to the authorities in managing the risk of known sex offenders and is thought to deter them from re-offending, as the police will immediately know which offenders are living in the area if an offence is committed.

Expanding the list of notification requirements could enhance public protection. We will change the law so that we can require all registered sex offenders to:

- provide a DNA sample where one has not been given previously;
- notify the police of any e-mail addresses;
- notify the police of passport numbers;
- notify the police of any bank account numbers;
- notify the police if they are living in the same household as a child under the age of 18;
- notify the police of *any* foreign travel (at present only trips of three days or longer must be notified); and
- report regularly to a police station if they register as homeless.

These changes would mean that the police would have more information to assist in the investigation of offences. Offenders could also be formally required to tell the police about risk factors that might increase the likelihood of them re-offending, for example if they form a relationship with a woman who has children. As with the current notification requirements, if an offender breached these rules, they would be subject to a maximum penalty of five years in prison.

All of these possible changes would be made easier by a legal change to the Sexual Offences Act 2003, to allow amendments to notification requirements to be made through secondary legislation rather than primary.

ACTION 13

Take a power to amend sex offender notification requirements by secondary legislation, and consider changes to the information registered to strengthen public protection.

THE MANAGEMENT OF YOUNG OFFENDERS

The issues involved in managing young sex offenders are different from those for adults. Young offenders are still growing in maturity and have a better chance of changing their behaviour.

To be sure that we are managing the risk of young sex offenders as effectively as possible, and that this is central to any new MAPPA model, we will specify that issues relevant to young sex offenders must be included in future amendments to the MAPPA guidance.

In every local authority in England and Wales, there is a YOT, which comprises representatives from the police,

probation and social services, health, education, drugs and alcohol misuse, and housing officers. We should improve multi-agency responses to youth offending generally. Specific guidance and training should be available to YOTs on the MAPPA system, and protocols for YOT engagement with MAPPA should be formally set out in a public protection policy.

Formally bringing together MAPPA and YOTs in this way will help ensure all the agencies responsible for managing young sex offenders are aligned to work together to protect the public, and equipped with the knowledge to do so in the most effective way possible.

ACTION 14

Revise MAPPA guidance to provide direction on managing young offenders

- to ensure specific issues concerning the management and risk assessment of young sex offenders are considered by MAPPA.

ACTION 15

The Youth Justice Board to ensure all Youth Offending Teams have appropriate guidance and training on MAPPA, and all Youth Offending Teams have a policy on public protection that includes reference to engagement with the local MAPPA

- to ensure all the agencies responsible for the management of young sex offenders are aligned to work together to protect the public, and are equipped with the knowledge to do so in the most effective way possible.

HOUSING CERTAIN SEX OFFENDERS

When offenders are released from prison, they are on licence for the remainder of their sentence. They must be supervised by the probation service for that period, and must adhere to the conditions of their licence, which may include a requirement to live at a specified address or at approved premises (formerly known as probation or bail hostels). There are 104 approved premises in England and Wales, providing around 2,200 bed spaces.

Approved premises are places approved by the Government for the supervision of people on bail, on community orders or on licence. They offer a range of advantages over other types of housing for high-risk offenders, due to the tight controls and strict measures available to manage the residents. These include curfews, round-the-clock staffing, CCTV, monitoring of residents' movements and behaviour, room searches, drug testing and strong links with MAPPA, including the facility for immediate recall to prison.

The purpose of approved premises for offenders on licence is to provide additional monitoring of their risk and supervision to manage that risk while they are resettling into the community. Naturally, there are strong feelings in communities about the location of approved premises. However, the alternative is for these offenders to be in private accommodation, or in some cases homeless, where supervision would be less effective and more costly.

The public has been understandably concerned about some approved premises that are immediately adjacent to schools. In response to this concern and to reassure the public, the Government has excluded sex offenders from 15 approved premises in these types of location.

Having reviewed the use of approved premises, we think it is right for certain high-risk child sex offenders to be supervised on release from prison in approved premises. These are offenders who are due to be released from prison and might otherwise be released to an address close to vulnerable families, without the kind of supervision provided by approved premises. But there are some important improvements that can be made.

At present, demand for places at approved premises is greater than supply,⁹ and we should work in the future to increase capacity where possible. In seeking to create additional capacity, it is vital that we address public concerns about where approved premises are and how they are run.

Offenders in approved premises may be required to keep to a night-time curfew, or to report to the approved premises during the day, depending on their level of risk. Offenders are required to have regular meetings with their probation officer and may be required to attend treatment to address their offending behaviour. Approved premises are not always able to provide a significant amount of structure or purpose to the offender's day, especially if they are unemployed. Lack of occupation can increase the risk of them returning to offending. We are therefore recommending that compulsory programmes of purposeful activity be introduced for offenders residing in approved premises. This activity could, for example, take the form of improving the offender's educational or vocational skills. It would also mean that offenders would be subject to increased supervision during the day.

⁹ Wood, J et al., *The operation and experience of Multi-Agency Public Protection Arrangements*, Home Office Research Findings, Home Office, 2007.

ACTION 16

Develop guidance on compulsory programmes of purposeful activity for residents in approved premises

- to increase the supervision of approved premises' residents and get them engaged in useful activity during the day.

Each approved premises has its own set of rules that offenders must follow in order to stay there. If a resident breaks the rules they may be evicted, and in some cases they may then be recalled to prison. The obvious advantage of having rules is that clear boundaries are set for residents, which limit disruptive or risky behaviour and allow enforcement action to be taken if a resident does not comply. While the rules at individual approved premises are generally robust and effective, they are not

standardised, so there is some inconsistency between areas in the circumstances in which residents are warned, evicted or recalled to prison for breaching the rules. A standard and rigorous set of rules, to which all offenders at approved premises must conform, would also help reassure the public that clear restrictions are placed on residents of approved premises.

ACTION 17

Implement standard rules of residence for all approved premises

- to place clear and non-negotiable boundaries on the behaviour of offenders in approved premises.

Harnessing new technologies to provide additional management capabilities

Recent advances in technology have provided new ways to monitor child sex offenders and to assess and manage risk, including more efficient ways of gathering and sharing information.

However, with the development of the internet, technology has also opened up new ways of offending. Some offenders use chat rooms and internet forums to groom victims, and obtaining and distributing child pornography has become easier. It is vital that we act on these developments to ensure we are able to protect children online as well as offline.

The following examples highlight where new technology has already been harnessed to help manage offenders:

- A new database, ViSOR, has been developed to record information on dangerous offenders and share it nationally between the MAPPA responsible authorities. This has facilitated the enforcement of the Sex Offenders' Register.
- Various types of offender are electronically tagged, enabling the authorities to impose curfews and monitor compliance remotely.
- CEOP provides a dedicated service to protect children and conduct surveillance of child sex offenders both online and offline.
- Trials have been run of voluntary polygraph (lie detector) testing for child sex offenders on licence. This report recommends a change in the law to allow trials of their compulsory use on offenders.

These are significant achievements, but as technology continues to move forward, so must our solutions. We need to build on the trials conducted and, where possible, implement these modern approaches on a wider scale.

USING TECHNOLOGY TO SHARE EXISTING INFORMATION

Gathering information is only the first step in successful offender management; sharing it with the right people is also vital. ViSOR is a computer database that stores a substantial amount of information (including photographs) about offenders. It holds records of offenders who are subject to MAPPA, registered sex offenders and other individuals who have been identified as posing a high risk of violent or sexual harm to the public.

ViSOR is already accessible to the police and is now being rolled out to the probation and prison services. This will ensure authorities at all stages of the criminal justice process are able to access the same information about dangerous individuals. They will also be able to record on it any new information they gather, so that it is not lost and can be shared with the other agencies.

The CEOP website (www.ceop.gov.uk) publishes a 'most wanted' list of high-risk child sex offenders who are not complying with their notification requirements and have gone missing. Offender details include photographs, names and aliases, dates of birth and other identifying information. The profile of this website should be raised, so the public is aware of the most high-risk offenders who have absconded and are therefore not being managed by the authorities. The website has already been shown to increase the likelihood of listed offenders being apprehended.

ACTION 18

Maximise the use and awareness of the Child Exploitation and Online Protection Centre website's 'most wanted' list of non-compliant and missing high-risk sex offenders

- to make the best use of this resource, maximise public awareness of high-risk non-compliant and missing sex offenders, and maximise intelligence received from the public on the whereabouts of these offenders.

POLYGRAPH TESTING – GATHERING NEW INFORMATION ON OFFENDERS

A polygraph (lie detector) test is designed to support traditional supervision by encouraging offenders to be more truthful in discussing their behaviour, in a way that helps both themselves and those who manage them. The test measures an offender's physical reactions when asked questions: their breathing, their heart rate and how much they are sweating. The offender is asked questions, and the results of the polygraph are used to help assess whether or not they are answering truthfully. They are used routinely by probation officers in the US.

The use of polygraphs was trialled in the UK with sex offenders who volunteered to take part. The majority of probation officers considered them very useful in managing offenders; however, testing on volunteers is limited in proving these benefits. We will therefore begin trialling mandatory polygraph testing. This requires a change in the law, expected later this year.

Polygraphs are not appropriate for all offenders and are not a stand-alone solution: they are one of a range of offender management tools. Results from polygraphs will not be relied on for gathering criminal evidence.

ACTION 19

Pilot the use of compulsory polygraph (lie detector) tests as a risk management tool

- to establish whether compulsory polygraph tests lead to increased disclosure of information that is helpful in the treatment and supervision of child sex offenders.

THE INTERNET

As the internet becomes a greater part of everyday life, so it becomes an increasing source of risk to children. The anonymity it offers and the opportunities it brings for contact with new people of all ages provide new avenues for child sex offenders.

Of course, most families use the internet quite safely. Parents can monitor their children's use of the family computer and can teach their children not to meet anyone they contact on the internet. However, many parents do not have the knowledge to monitor their children's use of the internet properly, and some child sex offenders are very skilled at concealing their identity online or masquerading as a child. This means that some children are at risk from predatory child sex offenders on the internet.

It is vitally important for parents to supervise and monitor their children's use of the internet. However, as a second line of child protection on the internet, CEOP conducts online surveillance of child sex offenders, and in its short history has had a major impact in stopping offenders harming children.

We should maintain and, where possible, develop this capability to monitor the online activities of child sex offenders. We will investigate the possibility of developing software to install on offenders' computers, to keep a record of websites and chat rooms visited and to record what is typed. This software could also be designed to contact the police automatically if certain trigger words or phrases that indicate grooming activity are typed.

SATELLITE TRACKING

Finally, the use of satellite tracking could be expanded to monitor the highest risk offenders. This can be used to monitor compliance with orders or licence conditions that ban the offender from a specified area. It could also potentially be used to conduct general surveillance of offenders' movements. The offender wears a tag, which, using the Global Positioning System (GPS), allows their location to be tracked as they move around.

This could help identify risky behaviour at an early stage, so that pre-emptive action could be taken to protect children before they become victims. Breaking licence conditions can lead to recall to prison, so, as the offender would be aware of the monitoring, there may also be a deterrent effect.

ACTION 20

Review the potential to expand the use of satellite tracking to monitor high-risk sex offenders

- to improve the monitoring of offenders, and help prevent child sex offences from occurring.

Contact

We are keen to hear your views and suggestions on the proposals contained in this review report. We would be grateful if you could direct your observations and enquiries to:

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Annex 1 – Contributors

Stakeholders

Association of Chief Police Officers
Barnardo's
Child Exploitation and Online Protection Centre
Churches' Child Protection Advisory Services
Circles of Support and Accountability
Derwent Initiative
GMAP
Kidscape
Langley House Trust
Leicestershire Children and Young People's Service
Local Government Association
Lucy Faithfull Foundation
Metropolitan Police Service
National Association for Probation and Bail Hostels
National Children's Home
National Organisation for the Treatment of Abusers
National Society for the Prevention of Cruelty to Children
Newcastle Hospital, Sexual Behaviour Unit
Office of the Children's Commissioner
Parole Board
Phoenix Survivors
Probation Board Association
Victim Support

International stakeholders

Anstalten ved Herstedvester State Prison, Denmark
Circuit Court of Warsaw, Poland
Circuit Court of Wroclaw, Poland
Colorado Bureau of Investigation
Department of Corrections, Washington State
Department of Justice, Equality and Law Reform, Ireland
Department of Prisons and Probation, Denmark
Interior Ministry, France
Justice Ministry, France
Justice Ministry, Poland
Latvian Probation Service
Oregon Department of Corrections
Seattle Police Department

Officials

Attorney General
Avon and Somerset Probation Service
Department for Education and Skills
Department of Health
Her Majesty's Courts Service
Her Majesty's Prison Service
Home Office
Local Government Association
London Probation Service
National Probation Directorate
Northern Ireland Office
PA Consulting
Scottish Executive
Violent and Sex Offender Register
Welsh Assembly Government
Youth Justice Board

Annex 2 – Project terms of reference

The terms of reference for the project are:

- to assess the strengths and weaknesses of the current arrangements for managing child sex offenders in England and Wales;
- to examine the case for adopting community notification requirements, including the benefits and costs, the experience in the USA of operating 'Megan's Law', and the impact of MAPPA and policies on rehabilitation, treatment and sentencing;
- to review the arrangements, in particular community notification requirements, for managing child sex offenders in the EU and selected overseas jurisdictions;
- to consider community education and awareness issues;
- to identify any research gaps; and
- to make costed recommendations to ministers with a view to publishing recommendations in spring 2007.

Annex 3 – List of actions

ACTION 1

Pilot a community awareness programme, in partnership with non-governmental organisations, to provide better child protection advice and develop messages to help parents and carers safeguard children effectively.

ACTION 2

Increase public awareness of how sex offenders are managed in the community, by ensuring easy-to-use information is widely available, and by ensuring strong local communication of MAPPA's work.

ACTION 3

Introduce a legal duty for MAPPA authorities to consider the disclosure of information about convicted child sex offenders to members of the public in all cases. The presumption will be that the authorities will disclose information if they consider that an offender presents a risk of serious harm to a member of the public's children.

ACTION 4

Pilot a process where members of the public can register their child protection interest in a named individual. Where this individual has convictions for child sex offences and is considered a risk, there will be a presumption that this information will be disclosed to the relevant member of the public.

We want to pilot the new policy in order to work through the details of implementation and to ensure we have a system of two-way disclosure that is as effective as possible without increasing the risk to children. It will be important for people who register an interest to receive a timely response. In all cases they should be given generic information on how best to protect their children. Following the pilot, we will consider whether this principle of two-way disclosure should be extended.

ACTION 5

Provide early access to help for non-convicted individuals concerned about their sexual thoughts or behaviour, to prevent new or continued sexual abuse from occurring.

ACTION 6

Develop the use of drug treatment to support existing psychological treatment.

ACTION 7

Conduct a feasibility study of joint prison and probation treatments.

ACTION 8

Develop national MAPPA structural and management arrangements to be applied in each area to ensure consistent, auditable processes.

ACTION 9

Develop national standards for MAPPA and ensure each area has strong central co-ordination and administration and is able to provide a single point of contact for general public enquiries about the work of MAPPA, support the roll-out of ViSOR, facilitate the duty to consider disclosure and support the key processes of risk assessment, recording of decisions and follow-up.

ACTION 10

Develop robust performance management arrangements for MAPPA.

ACTION 11

Establish a defined and consistent role for MAPPA lay advisers, which includes increasing public awareness.

ACTION 12

Develop the current process for managing cross-border MAPPA cases.

ACTION 13

Take a power to amend sex offender notification requirements by secondary legislation, and consider changes to the information registered to strengthen public protection.



ACTION 14

Revise MAPPA guidance to provide direction on managing young offenders.

ACTION 15

The Youth Justice Board to ensure all Youth Offending Teams have appropriate guidance and training on MAPPA, and all Youth Offending Teams have a policy on public protection that includes reference to engagement with the local MAPPA.

ACTION 16

Develop guidance on compulsory programmes of purposeful activity for residents in approved premises

ACTION 17

Implement standard rules of residence for all approved premises.

ACTION 18

Maximise the use and awareness of the Child Exploitation and Online Protection Centre website's 'most wanted' list of non-compliant and missing high-risk sex offenders.

ACTION 19

Pilot the use of compulsory polygraph (lie detector) tests as a risk management tool.

ACTION 20

Review the potential to expand the use of satellite tracking to monitor high-risk sex offenders

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Reforming (purportedly) Non-Punitive Responses to Sexual Offending

By Adam Shajnfeld* and Richard B. Krueger**

I. Introduction

Clovis Claxton, who was developmentally disabled and wheelchair-bound after contracting meningitis and encephalitis as a child, was twenty-four years old and living with his family in Washington state in 1991 when he exposed himself to the nine-year-old daughter of a caregiver.¹ Although he had the mental capacity of a ten- to twelve-year-old child, he was charged with first-degree child molestation and served twenty-seven months in prison.² When his family moved to Florida in 2000, Claxton was listed as a sexual offender on the Florida Department of Law Enforcement website, but the website inaccurately indicated he had been charged with the rape of a child.³ Claxton had not been charged with any other offense since his release from prison, but sheriff's deputies in Florida did take him into custody at least five times for threatening suicide.⁴

In 2005, brightly-colored fliers were dropped into mailboxes and pinned to trees around Claxton's neighborhood, where he lived in an apartment adjoining his parents' house.⁵ A

short time before, a county commissioner had urged that warning signs be posted in neighborhoods where convicted sex offenders live.⁶ The fliers displayed Claxton's picture and address, downloaded from the Florida website, and the words "child rapist."

Claxton, distraught and fearing for his life, called the sheriff's office and said he wanted to kill himself.⁷ He was taken for an overnight psychiatric assessment, but released the next day.⁸ The following morning he was found dead, an apparent suicide, with one of the fliers lying next to him.⁹

Alan Groome was eighteen years old when he was convicted of a sex offense.¹⁰ He was paroled after serving a number of years behind bars in the state of Washington. Upon his release, he moved in with his mother, but they were evicted from their apartment when residents learned of his past. They then moved in with his grandmother, but Groome was forced to leave when police officers knocked on the doors of 700 neighbors, handing out fliers with his address and photo.

Groome became homeless, begging for money. "I got the feeling no one cares about me, so why should I care about myself and what I do?" said Groome. One detective described Groome as "a man without a country." His parole officer loaned him money because he believed Groome had "a lot of potential." A little over two years after being

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¹ Cara Buckley, *Town Torn Over Molester's Suicide*, MIAMI HERALD, Apr. 23, 2005, at 1; Daniel Ruth, *Who Was the Real Threat to the Town?* TAMPA TRIB., Apr. 27, 2005, at 2.

² Buckley, *supra* note 1, at 1.

³ *Id.*

⁴ *Id.*; Ruth, *supra* note 1, at 2.

⁵ Buckley, *supra* note 1, at 1; Ruth, *supra* note 1, at 2.

⁶ Buckley, *supra* note 1, at 1.

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

¹⁰ The quotes and facts in this paragraph are taken from Daniel Golden, *Sex-Cons*, BOSTON GLOBE, Apr. 4, 1993, at 12. This article does not address the many issues surrounding juvenile sex offenders. For a treatment of these issues, see Elizabeth Garfinkle, *Coming of Age in America: The Misapplication of Sex-Offender Registration and Community-Notification Laws to Juveniles*, 91 CAL. L. REV. 163 (2003).

released from prison, Groome had not been re-arrested but was living in a homeless shelter, looking for employment.¹¹

As will be discussed, the United States Supreme Court has distinguished between society's punitive and non-punitive responses to sexual offenders, granting society more discretion and affording sexual offenders few protections in conjunction with non-punitive responses. Although all agree that sexual offenses should generally result in punitive sanctions, including prison sentences, the so-called non-punitive responses to sex offenders currently employed by society are not only very punitive in nature, but they are also largely unhelpful in curbing and may even be increasing sexual offending. Sex offender registration and notification requirements, for example, place offenders in physical danger, force offenders out of their homes and cause them to lose their jobs, and create public hysteria.¹²

These requirements often bear little relation to the risk posed by the offender. The label "sex offender" can refer to anyone from a child rapist to an adult involved in a consensual, albeit incestuous, relationship with another adult. These requirements are typically insensitive to differences in motivation and intent, the nature of the offense and its impact on the victim, and the likelihood of recidivism and risk to society. Further, these regimes

rarely allow sex offenders who successfully undergo treatment or who can be demonstrated to be highly unlikely to reoffend to be relieved of these requirements before at least many years have passed, if at all.

Legal and societal responses should take better account of what is currently known about sex offenders and be changed accordingly. This Article describes the characteristics of sex offenders (Part II), discusses various registration and notification requirements (Part III), explores Constitutional challenges to registration and notification laws (Part IV), addresses the civil commitment of sex offenders (Part V), analyzes the various problems with current responses to sex offenders (Part VI), reports current options for treating sex offenders (Part VII), provides various recommendations for implementing a more appropriate societal response to sex offenders (Part VIII), and offers some concluding remarks (Part IX).

II. Characteristics of Sex Offenders

"Sex offender" is a legal, not a psychological term.¹³ There is no uniform definition of a sex offender. One who engages or attempts to engage in a sexual act with a minor, or who commits or attempts to commit aggravated sexual battery against a person of any age, is widely considered to be a sex offender.¹⁴ In many states, persons who have been

¹¹ *Turning Point with Barbara Walters* (ABC News television broadcast Sept. 21, 1994), transcript available on LexisNexis ("Interview with Alan Groome, Transcript #131").

¹² Although this article mainly addresses three particular so-called non-punitive responses: civil commitment, registration, and community notification, there are others, including restrictions on where a sex offender can reside and work. In Virginia, for example, a person convicted of various sex offenses involving children is permanently prohibited from loitering within 100 feet of a primary, secondary, or high school or a child day program (VA. CODE § 18.2-370.2 (2006)), residing within 500 feet of any child day center, or primary, secondary, or high school (VA. CODE § 18.2-370.3 (2006)), or working or engaging in any volunteer activity on property that is part of a public or private elementary or secondary school or child day center (VA. CODE § 18.2-370.4 (2006)).

¹³ Richard B. Krueger & Meg S. Kaplan, *The Paraphilic and Hypersexual Disorders: An Overview*, 7 J. PSYCHIATRIC PRAC. 391, 393 (Nov. 2001).

¹⁴ The federal enactment establishing the Jacob Wetterling, Megan Nicole Kanka, and Pam Lychner Sex Offender Registration and Notification Program Act defines "sex offender" as "an individual who was convicted of a sex offense" and defines "sex offense" generally as a criminal offense that has an element involving a sexual act or sexual contact with another, various listed criminal offenses against a minor, or an attempt or conspiracy to commit these offenses. Adam Walsh Child Protection and Safety Act of 2006, Pub. L. No. 109-248, § 111 (2006). Many state statutes are more specific. See, e.g., VA. CODE ANN. § 9.1-902 (2006); WASH. REV. CODE § 9A.44.130(9) (2006).

convicted of possessing child pornography are also classified as sex offenders,¹⁵ as are adults engaged in consensual incest,¹⁶ persons who indecently expose themselves,¹⁷ and statutory rapists (for instance, a twenty-two year old who has sex with her sixteen year-old boyfriend).¹⁸ The legal definition of a sex offender includes a very wide range of offenders. From a psychological perspective, though, sex offenders are extremely diverse. The psychological profiles, recidivism rates, and effective treatment modalities of such offenders vary greatly. To appropriately respond to these individuals, a better understanding of these variations is needed.

For example, it is important to distinguish between paraphilic sex offenders and non-paraphilic sex offenders. Paraphilias are psychiatric disorders defined as

recurrent, intense sexually arousing fantasies, sexual urges, or behaviors generally involving 1) nonhuman objects, 2) the suffering or humiliation of oneself or one's partner, or 3) children or other nonconsenting persons that occur over a period of at least 6 months.¹⁹

To be diagnosed as having a paraphilia, depending on the type of paraphilia,²⁰ the person must also either have acted on the urge or there must be resulting clinically significant distress or impairment in important areas of functioning.²¹ Those who develop paraphilias tend to lack social skills and suffer from depression, substance abuse, or other co-occurring psychiatric disorders.²² Far more men than women develop paraphilias.²³

Paraphilias need not involve illegal behavior. Transvestic fetishism, where a heterosexual male engages in cross-dressing, is not a crime. Further, not all sex offenders suffer from paraphilias. For example, many rapists commit sex offenses out of anger and desire for domination, not for sexual gratification.²⁴ In one study involving thirty-six convicted male sex offenders, only 58% could be diagnosed with a paraphilia.²⁵

Regardless of these variations, as of 2006, there were roughly 566,700 registered sex offenders in the United States.²⁶ This figure, however, is not a reliable measure of the actual number of sex offenders, as sex offenses are extremely underreported.²⁷ At

¹⁵ FLA. STAT. §§ 775.21(4)(a)1b, 827.071(5) (2006); BURNS IND. CODE ANN. § 35-42-4-4(c) (2006). An Indiana appellate court left open the question of whether that state's statute could be applied to virtual child pornography. *Logan v. State*, 836 N.E.2d 467, 472 (Ind. Ct. App. 2005). The federal law governing sex offender registration and notification was recently expanded to include possession, production, or distribution of child pornography. Adam Walsh Child Protection and Safety Act of 2006 § 111(7)(G).

¹⁶ LA. REV. STAT. ANN. § 14:78 (2006). The statute includes within the definition of incest an uncle and niece either marrying or having sexual intercourse with one another, regardless of how old they are. *Id.*

¹⁷ TEX. PENAL CODE § 21.08 (2006). Under Texas law, a person can be guilty of indecent exposure even if no one else actually sees the defendant's genitals. *Boyles v. State*, No. 05-94-01727-CR, 1996 WL 403992, at *8 (Tex. App. July 12, 1996).

¹⁸ N.Y. PENAL LAW § 130.25(2) (Consol. 2006).

¹⁹ AMERICAN PSYCHIATRIC ASSOCIATION, DIAGNOSTIC AND STATISTICAL MANUAL OF MENTAL DISORDERS: FOURTH EDITION, TEXT REVISION 566 (2000) [hereinafter DSM-IV-TR].

²⁰ The various types of paraphilia include Exhibitionism, Fetishism, Frotteurism, Pedophilia, Sexual Masochism, Sexual Sadism, Transvestic Fetishism, Voyeurism, and Paraphilia Not Otherwise Specified. See *id.* at 569-76.

²¹ *Id.* at 566.

²² SIMON LEVAY & SHARON M. VALENTE, HUMAN SEXUALITY 469 (2002); Krueger & Kaplan, *supra* note 13, at 399-400.

²³ THE MERCK MANUAL OF DIAGNOSIS AND THERAPY, § 15, Ch. 192 (1999-2005), available at <http://www.merck.com/mrkshared/mmanual/section15/chapter192/192d.jsp>.

²⁴ KAREN J. TERRY, SEXUAL OFFENSES AND OFFENDERS: THEORY, PRACTICE, AND POLICY 92 (2006).

²⁵ Krueger & Kaplan, *supra* note 13, at 393 (citing Susan L. McElroy et al., *Psychiatric Features of 36 Men Convicted of Sexual Offenses*, 60 J. CLINICAL PSYCHIATRY 414, 416 (1999)).

²⁶ National Center for Missing and Exploited Children, *Registered Sex Offenders in the United States* (Mar. 6, 2006), at http://www.missingkids.com/en_US/documents/sex-offender-map.pdf.

²⁷ TERRY, *supra* note 24, at 7, 10.

the same time, this number can be mistakenly read to indicate the number of current active sex offenders in this country, a conclusion that fails to take into account the effects of treatment and monitoring, and the fact that many of these offenders are relatively unlikely to reoffend.

One of the most complicated and contested issues regarding sex offenders is that of recidivism.²⁸ Calculating their rate of recidivism is difficult for a number of reasons. First, as noted, sex offenses are underreported.²⁹ Second, sex offenders may continue to re-offend for many years, and thus recidivism rates differ depending on the length of time considered.³⁰ Third, recidivism differs substantially depending on the type of sex offender in question.³¹ For instance, sex offenders who molest a family member (i.e., those who commit incest) are less likely to re-offend than those who molest non-family members.³² Similarly, one study found recidivism rates for rapists and child molesters to be 18.9% and 12.7%, respectively, over an average four to five year follow-up period.³³ Collapsing all sex offenders together into a single category and making generalizations about this diverse range of offenders using this aggregate determination is likely to result in substantial mischaracterizations regarding the risk of re-offending for many of these individuals.

Even though lumping the recidivism rates of all sex offenders together is unhelpful in assessing the risk posed by these offenders, it does shed light on the dubiety of popular claims about sex offender recidivism. One meta-analysis of recidivism studies of over 23,000 sex offenders found the rate of recidivism to be 13.4% on average for a four to five year follow-up period.³⁴ Another study, from the United States Department of Justice, found recidivism for sex offenders released from prison to be 5.3% for a three-year follow-up period.³⁵ In contrast, a Department of Justice report of recidivism rates for nearly 300,000 released prisoners found that 13.4% of those imprisoned for robbery were rearrested for robbery after release, and 22% of those imprisoned for assault were rearrested for assault following release, all within a three-year follow-up period.³⁶ Thus, while recidivism rates are difficult to measure and reported results vary, and there are numerous factors that make recidivism for a particular individual more or less likely,³⁷ the recidivism of sex offenders is neither inevitable³⁸ nor nearly as high as popularly believed.³⁹

A number of studies have reported higher recidivism rates for sex offenders, most prominently the so-called "Abel study" where 561 non-incarcerated paraphiliacs reported that they had committed a total of 291,737

²⁸ For a good review of the recidivism issue, including the results of many studies, see CENTER FOR SEX OFFENDER MANAGEMENT (PRINCIPAL AUTHOR TIM BYNUM), *RECIDIVISM OF SEX OFFENDERS* (May 2001), <http://www.csom.org/pubs/recidsexof.pdf>.

²⁹ TERRY, *supra* note 24, at 7, 10.

³⁰ Lucy Berliner, *Sex Offenders: Policy and Practice*, 92 Nw. U. L. Rev. 1203, 1209 (1998) (citing R. Karl Hanson et al., *Long Term Recidivism of Child Molesters*, 61 J. CONSULTING & CLINICAL PSYCHOL. 646 (1993)).

³¹ *Id.*

³² Hanson et al., *supra* note 30, at 646.

³³ R. Karl Hanson & Monique T. Bussière, *Predicting Relapse: A Meta-Analysis of Sexual Offender Recidivism Studies*, 66 J. CONSULTING & CLINICAL PSYCHOL. 348, 351 (1998).

³⁴ *Id.* at 357. The meta-analysis included studies that measured recidivism in terms of re-conviction, re-arrest, and offenders' self-reports. *Id.* at 350.

³⁵ PATRICK A. LANGAN ET AL., *RECIDIVISM OF SEX OFFENDERS RELEASED FROM PRISON IN 1994*, 1 (2003), available at

<http://www.ojp.usdoj.gov/bjs/pub/pdf/rsorp94.pdf>.

³⁶ PATRICK A. LANGAN & DAVID J. LEVIN, U.S. DEP'T OF JUSTICE, *RECIDIVISM OF PRISONERS RELEASED IN 1994*, NCJ 193427, at 9 (2002), available at <http://www.ojp.usdoj.gov/bjs/pub/pdf/rpr94.pdf>.

³⁷ LEVAY & VALENTE, *supra* note 22, at 467.

³⁸ Hanson & Bussière, *supra* note 33, at 357.

³⁹ ROBERT ALAN PRENTKY & ANN VOLBERT BURGESS, *FORENSIC MANAGEMENT OF SEXUAL OFFENDERS* 237 (2000). See also SARAH BROWN, *TREATING SEX OFFENDERS: AN INTRODUCTION TO SEX OFFENDER TREATMENT PROGRAMS* 8 (2005).

"paraphilic acts" against 195,407 victims.⁴⁰ The Abel study suffers from a number of serious problems. First, "paraphilic acts" are defined very broadly, including fetishism, homosexuality, sadism, and masochism.⁴¹ These behaviors, though, are not illegal when they involve a consenting adult, and homosexuality is no longer considered a paraphilia. In fact, the Abel study hints at this confusion, at one point using the term "victim/partner."⁴² Thus, it is doubtful that the high rate of recidivism is reflective of what is currently thought to be a sex offense. Second, the median values of the number of victims per paraphiliac are significantly lower than the mean (average) values, which indicate that a small percentage of paraphiliacs are responsible for a disproportionately large amount of the sex offenses.⁴³ Broad generalizations from a study such as this one fuel panic, but do not accurately reflect the fact that, although there are outliers who are extreme offenders, recidivism rates are low for most sex offenders.

III. Registration and Notification Laws

In 1994, Congress passed the Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act.⁴⁴ While not imposing mandatory obligations on the states, the Wetterling Act was a significant milestone because it provided significant financial incentives for the states to adopt various provisions pertaining to sex offenders.⁴⁵ For example, it required sex offenders to register for at least ten years with authorities following release from prison or

placement on parole, supervised release, or probation.⁴⁶ Further, state officials were expected to collect and maintain information about offenders, such as their name, home address, photograph, fingerprints, offense history, and documentation of any treatment received for mental abnormality or personality disorder.⁴⁷ In 1996, the Wetterling Act was amended to include a notification provision, known as "Megan's Law," which allows states to disclose information collected through registration for "any purpose permitted under the laws of the State."⁴⁸ Megan's Law, like many other broad sex offender laws, was enacted in the politically and emotionally charged aftermath of a brutal act against a child.⁴⁹ Currently, all fifty states have enacted some type of Megan's Law.⁵⁰

Recently, Congress passed a new version of the Wetterling Act as part of the Adam Walsh Child Protection and Safety Act of 2006.⁵¹ The bill expands the sex offender registration and notification requirements previously imposed on the states. First, it broadens the definition of sex offender, divides sex offenders into three tiers (tier III being the most serious) based on the severity of the crime for which the offender was convicted, and requires that all sex offender registries include the offender's name (including any alias), physical description, current photograph, Social Security number, residential address, vehicle and license plate number, DNA sample, fingerprints, criminal offense, and criminal history; the name and

⁴⁰ Gene G. Abel et al., *Self-Reported Sex Crimes of Nonincarcerated Paraphiliacs*, 2 J. INTERPERSONAL VIOLENCE 3, 19 (1987).

⁴¹ *Id.* at 18.

⁴² *Id.* at 17.

⁴³ *See id.*

⁴⁴ 42 U.S.C. 14071 (2006). As will be discussed, this law was recently amended. *See* Adam Walsh Child Protection and Safety Act of 2006, Pub. L. No. 109-248 (2006).

⁴⁵ *Id.* at (g), (i). States that do not comply face a reduction of 10% of funds allocated under § 42 U.S.C. 3751 for criminal justice projects.

⁴⁶ *Id.* at (b)(6).

⁴⁷ *Id.* at (b)(1)(A)(iv), (b)(1)(B).

⁴⁸ Pub. L. No. 104-145 (1996) (codified as 42 U.S.C. § 14071(e) (2006)).

⁴⁹ *See* Michele L. Earl-Hubbard, *Comment: The Child Sex Offender Registration Laws: The Punishment, Liberty Deprivation, and Unintended Results Associated with the Scarlet Letter Laws of the 1990s*, 90 NW. U.L. REV. 788, 813 (1996); TERRY, *supra* note 24, at 184.

⁵⁰ Doron Teichman, *Sex, Shame, and the Law: An Economic Perspective on Megan's Laws*, 42 HARV. J. LEGIS. 355, 357 (2005).

⁵¹ Adam Walsh Child Protection and Safety Act of 2006, Pub. L. No. 109-248 (2006).

address of any employer; and the name and address of any school that is being attended.⁵²

Second, it requires all jurisdictions to make virtually all sex offender registry information publicly accessible via the Internet and creates a national sex offender website.⁵³ This generally forces states to broadly disseminate information on every registered sex offender, not just those who pose the greatest risk of re-offending.⁵⁴

A few items cannot be posted, including the identity of any victim, the Social Security number of the sex offender, and any reference to arrests that did not result in conviction, and a few items are left to the discretion of the state, including any information about a tier I sex offender convicted of an offense other than a specified offense against a minor, the name of the employer of the sex offender, and the name of an educational institution where the sex offender is a student.⁵⁵

Third, the bill imposes a registration and Internet notification requirement of fifteen years for a tier I sex offender (with a reduction of five years if a "clean record" is maintained), of twenty-five years for a tier II sex offender, and of life-long duration for a tier III offender.⁵⁶ A tier I offender is required to re-register in person at least once a year, a tier II offender every six months, and a tier III offender every three months.⁵⁷

For purposes of comparison, the following are some existing examples of state registration and notification regimes. In Washington, a sex offender can be relieved of the

requirement to register ten years after the offender has either been released from confinement, or, if there was no confinement, ten years from entry of judgment and sentence.⁵⁸ In Florida, the earliest a sex offender who offended as an adult can be relieved of the requirement to register is twenty years after the offender has been released from sanction, supervision, or confinement, whichever is later.⁵⁹ To be relieved of this requirement after twenty years, the offender cannot have been arrested for any felony or misdemeanor (not just a sexual or related offense) since his release,⁶⁰ and a court must grant the offender's petition for relief.⁶¹ In Washington and Florida, even if a sex offender no longer poses a risk of re-offending, he must still register as a sex offender until at least either ten or twenty years, respectively, have passed.⁶²

Registration, though, did not necessarily mean that the community would be notified about the sex offender. Under the previous Wetterling Act, states were required to notify the community of certain offenders, while notification for others remained optional.⁶³ State-sponsored Internet sites were routinely used as a means to provide this notification.⁶⁴

⁵² WASH. REV. CODE § 9A.44.140(1)(c) (2006).

⁵³ FLA. STAT. § 943.0435(11)(a) (2006).

⁶⁰ *Id.* at 11(a).

⁶¹ *Id.* at 11.

⁶² In these states, an offender who was a physically castrated quadriplegic suffering from dementia would still have to register for this entire period of time.

⁶³ See 42 U.S.C. 14071(e)(2) (2006), which requires that states release information to the community when "necessary to protect the public concerning a specific person required to register under this section." The Department of Justice has interpreted this provision to require release of information to the community about the most dangerous offenders, but permits a state to choose not to release information regarding sex offenders it deems are not a threat to public safety. U.S. DEP'T OF JUSTICE, MEGAN'S LAW; FINAL GUIDELINES FOR THE JACOB WETTERLING CRIMES AGAINST CHILDREN AND SEXUALLY VIOLENT OFFENDER REGISTRATION ACT, AS AMENDED, No. RIN 1105-AA56, 582 (1997).

⁶⁴ Of the fifty states, only Rhode Island provides no information about sex offenders on an Internet site.

⁵² *Id.* at §§ 111, 114.

⁵³ *Id.* at §§ 118, 120.

⁵⁴ Some states had already begun to take this step. In Virginia, for example, the General Assembly in 2006 expanded dissemination via the Internet from individuals "convicted of murder of a minor and violent sex offenders" to individuals "convicted of an offense for which registration is required." See VA. CODE § 9.1-913 (2006).

⁵⁵ Adam Walsh Child Protection and Safety Act of 2006 § 118.

⁵⁶ *Id.* at § 115.

⁵⁷ *Id.* at § 116.

Many states, however, made information regarding *all* sex offenders accessible via the Internet as well.⁶⁵ The amount of information available on a particular offender varied from state to state, but all states included the offender's name, offense, physical characteristics, and age.⁶⁶ Florida's Internet sex offender database also included the offender's photograph and last known address.⁶⁷

Some states employed risk-tiers, with offenders classified by their risk of re-offending. For example, Rhode Island law provided for three risk-tiers: low risk, moderate risk, and high risk.⁶⁸ The level of community notification, if any, depended on the offender's classification.⁶⁹ Law enforcement agents were notified of low risk offenders.⁷⁰ For moderate and high risk offenders, Internet notification was permitted.⁷¹

While community notification today is typically provided via the Internet, this need not be the exclusive means. Louisiana, in addition to having a searchable Internet database of sex offenders,⁷² also has perhaps the strictest and most comprehensive notification requirements of any state.⁷³ Upon release from confinement, a sex offender must supply his name, address, crime information, and photograph to all residences and businesses within a one-mile radius in a rural area, or 3/10 mile radius in an urban area, of the

See <http://www.klaaskids.org/pg-legmeg.htm> (last visited July 17, 2006).

⁶⁵ For example, Florida provides a searchable Internet database generally listing all convicted sex offenders available at

http://www3.fdle.state.fl.us/sexual_predators/ (last visited July 17, 2006).

⁶⁶ Teichman, *supra* 50, at 381.

⁶⁷ See

http://www3.fdle.state.fl.us/sexual_predators/search.asp?sopu=true&PSessionId=819208581& (last visited July 18, 2006).

⁶⁸ R.I. GEN. LAWS § 11-37.1-12 (2006).

⁶⁹ *Id.*

⁷⁰ *Id.* at (b).

⁷¹ *Id.*

⁷² See <http://lasocpr1.lsp.org/> (last visited July 18, 2006).

⁷³ See LA. REV. STAT. ANN. § 15:542 (2006).

offender's residence. The offender must also notify all adults also residing in his place of residence and the superintendent of the school district in which he resides of his status.⁷⁴ A court may even require the offender to wear special clothing indicating that he is a sex offender.⁷⁵

IV. Constitutionality of Registration and Notification Laws

The Supreme Court has issued two major rulings on the constitutionality of sex offender registration and notification laws, both in 2003.

A. Procedural Due Process: *Connecticut Department of Public Safety v. Doe*⁷⁶

In 1999, a person (referred to as John Doe) required to register as a sex offender under Connecticut law,⁷⁷ filed a federal lawsuit under 42 U.S.C. § 1983⁷⁸ against the Connecticut agencies responsible for administering the State's sex offender registry. Connecticut's law required certain classes of sex offenders to register, and provided for community notification of the presence of these offenders without regard to the registrant's degree of dangerousness to the community.⁷⁹ Instead, the registration requirement was linked to whether they had been convicted of certain specified sex offenses.⁸⁰

Doe asserted that this registration requirement harmed his reputation and altered his status under state law. Doe alleged, *inter alia*, that the failure to provide him with a pre-registration hearing to determine if he was

⁷⁴ *Id.* at § 15:542(B)(1)(a)-(c).

⁷⁵ *Id.* at § 15:542(B)(3) ("Give any other notice deemed appropriate by the court in which the defendant was convicted of the offense . . . including but not limited to signs, handbills, bumper stickers, or clothing labeled to that effect.").

⁷⁶ 538 U.S. 1 (2003).

⁷⁷ CONN. GEN. STAT. § 54-250-261 (2001).

⁷⁸ This section allows a person to sue, in federal court, for a state's violation of his or her civil rights.

⁷⁹ *Connecticut Department of Public Safety v. Doe*, 538 U.S. at 4-5, 7.

⁸⁰ CONN. GEN. STAT. § 54-258a (2001).

dangerous violated his procedural due process rights under the Fourteenth Amendment because he was deprived of his liberty interests without a hearing.

The Supreme Court found no violation of procedural due process.⁸¹ The Court reasoned that procedural due process only requires a hearing on the existence of a particular fact (or facts) when such fact is relevant under a state statute.⁸² Here, as the statute did not claim that the list was comprised of dangerous sex offenders, but instead merely claimed to be a list of sex offenders regardless of level of danger, Doe was not entitled to a hearing to determine his dangerousness.

In *dicta*, the Court noted that one could still challenge the State's law on substantive due process grounds, an issue not brought up nor addressed in the case.⁸³

B. Ex Post Facto: *Smith v. Doe*⁸⁴

The Ex Post Facto Clause of the Constitution⁸⁵ prohibits the government from imposing punishment for an act that was not a crime at the time it was committed, and from imposing more punishment for an offense than was prescribed by law at the time the crime was committed.⁸⁶

⁸¹ *Connecticut Department of Public Safety v. Doe*, 538 U.S. at 1.

⁸² *Id.* at 7.

⁸³ *Id.* at 8. A substantive due process claim asserts that the claimant has a fundamental right to some constitutionally-protected interest that is being infringed by the law/action in question, and that the government has to justify abridging that fundamental right. If a fundamental right is implicated, a court strictly scrutinizes the law/action, and a very strong justification is required to overcome a presumption of unconstitutionality. Less strict standards of review are applicable to abridgments of quasi- or non-fundamental rights. See *Gunderson v. Hvass*, 339 F.3d 639, 643-44 (8th Cir. 2003).

⁸⁴ 538 U.S. 84 (2003).

⁸⁵ U.S. CONST. art. I, § 9, cl 3.

⁸⁶ *Cummings v. Missouri*, 71 U.S. 277, 325-26 (1867).

In 1994, Alaska passed its Sex Offender Registration Act (SORA).⁸⁷ SORA contains a registration requirement and provides for community notification.⁸⁸ Alaska makes much of the information it gathers available on the Internet.⁸⁹ Of primary relevance to this lawsuit, however, was that SORA was made retroactive, thereby encompassing sex offenders who committed their crimes before SORA was enacted.⁹⁰ Respondents John Doe I and John Doe II, both convicted of sex offenses before passage of SORA and then, after the passage of SORA, required to register under it, brought an action under 42 U.S.C. § 1983 challenging SORA as it applied to them as a violation of the Ex Post Facto Clause. The Supreme Court found no violation of the Ex Post Facto Clause.⁹¹

The primary question as far as the Court was concerned was whether SORA imposed additional punishment after the fact (i.e., after the crime was committed). The Court determined that if the legislature intended to impose punishment through its legislation, then its retroactive application was indeed a violation of the Ex Post Facto Clause.⁹² If the legislature intended to enact a civil (non-punitive) regulatory scheme through its legislation, however, there was an Ex Post Facto violation only if the statutory scheme was so punitive in its effect as to negate the legislature's stated intent.⁹³ The Court stated that it was required to be deferential to the legislature's stated intent,⁹⁴ requiring the "clearest proof" of punitiveness to overcome a presumption that the legislature had

⁸⁷ See 1994 Alaska Sess. Laws page no. 41 (codified at ALASKA STAT. §§ 12.63, 18.65.087 (1994)).

⁸⁸ See *id.*

⁸⁹ *Smith v. Doe*, 538 U.S. at 91.

⁹⁰ 1994 Alaska Sess. Laws page no. 41, § 12.

⁹¹ *Smith v. Doe*, 538 U.S. at 84.

⁹² *Id.* at 92.

⁹³ *Id.* at 92 (citing *United States v. Ward*, 448 U.S. 242, 248-49 (1980)).

⁹⁴ *Id.* at 92 (citing *Kansas v. Hendricks*, 521 U.S. 346, 361 (1997)).

accurately depicted the nature of its legislation.⁹⁵

In the case before it, the Court noted that the Alaska legislature had stated that its intent in enacting SORA was to protect public safety.⁹⁶ As a result, the Court found that the stated intent of the legislature was not to impose punishment on sex offenders with the registration requirement.⁹⁷ The Court then proceeded to determine whether the legislation had sufficient punitive effect to undercut this characterization.

The Court discussed five of seven factors previously established,⁹⁸ which, while not "exhaustive or dispositive,"⁹⁹ provided "useful guideposts" in determining if a law is sufficiently punitive in effect to overcome the stated intent of the legislature.¹⁰⁰ The factors were whether the regulatory scheme: (1) has been historically/traditionally regarded as punishment, (2) serves the traditional aims of punishment, (3) imposes an affirmative restraint or disability on the offender, (4) has an alternative (non-punitive) purpose to which it may be rationally connected, and (5) is excessive in relation to the alternative purpose.¹⁰¹

Under this analysis, the Court found no punitive effect sufficient to overcome the legislature's stated intent.¹⁰² First, while SORA might resemble colonial shaming punishments—in which the offender was held up before others, forced to confront them face-to-face, and sometimes expelled from the community—SORA was substantively different, as public shaming often involved corporal punishment and, even when it did

not, involved more than mere dissemination of information.¹⁰³ Second, the Court found that SORA imposed no physical restraint on the offender, nor did it restrain the activities sex offenders may pursue, such as employment.¹⁰⁴ Third, while the statute might deter crimes, the mere presence of a deterrent effect did not render legislation criminal.¹⁰⁵ Fourth, SORA was determined to have a legitimate, non-punitive purpose, namely, that of promoting and ensuring public safety, and its execution was rationally connected to this purpose.¹⁰⁶ Fifth, SORA was not considered to exceed its non-punitive purpose, even though it was potentially over-inclusive by failing to mandate individual determinations of dangerousness, because Alaska could rationally conclude that a conviction for a sex offense provided evidence of a substantial risk of recidivism.¹⁰⁷

C. Other Potential Constitutional Challenges

By casting Megan's Law statutes as non-punitive (i.e., they do not impose punishment on sex offenders), the Court has also precluded a constitutional challenge based on an Eighth Amendment "cruel and unusual punishment" theory.¹⁰⁸ In addition, although the Supreme Court has yet to address these issues, federal courts of appeals have generally rejected attacks against registration and notification statutes based on purported violations of substantive due process,¹⁰⁹ privacy,¹¹⁰ and equal protection.¹¹¹ In light of

⁹⁵ *Id.* at 92 (quoting *Hudson v. United States*, 522 U.S. 93, 100, 139 (1997) (quoting *Ward*, 448 U.S. at 249)).

⁹⁶ *Id.* at 93.

⁹⁷ *Id.* at 96.

⁹⁸ *Kennedy v. Mendoza-Martinez*, 372 U.S. 144, 168-69 (1963).

⁹⁹ *Smith v. Doe*, 538 U.S. at 96 (quoting *Ward*, 448 U.S. at 249).

¹⁰⁰ *Id.* at 96 (quoting *Hudson*, 522 U.S. at 99).

¹⁰¹ *Mendoza-Martinez*, 372 U.S. at 168-69.

¹⁰² *Doe*, 538 U.S. at 105.

¹⁰³ *Id.* at 98.

¹⁰⁴ *Id.* at 100.

¹⁰⁵ *Id.* at 102 (citing *Hudson*, 522 U.S. at 105).

¹⁰⁶ *Id.* at 102-03.

¹⁰⁷ *Id.* at 104.

¹⁰⁸ See *id.* at 102-03.

¹⁰⁹ *Gunderson v. Hvass*, 339 F.3d 639, 643-44 (8th Cir. 2003), *cert. denied* 540 U.S. 1124 (2003) (holding that no fundamental right is implicated by such a statute, and that the statute is rationally related to a legitimate government purpose). See also *In re W.M.*, 851 A.2d 431, 450 (D.C. Cir. 2004), *cert. denied* 125 S. Ct. 885 (2005) (holding that Alaska's SORA statute does not implicate a fundamental right).

¹¹⁰ *A.A. v. New Jersey*, 341 F.3d 206 (3d Cir. 2003) (stating that any privacy right of a sex offender is

the Court's unwillingness to strike down sex offender registration and notification laws in the two cases it considered, sex offenders would likely face an uphill battle pursuing these other challenges before the Supreme Court.

V. Civil Commitment

Another means widely thought to limit the danger posed by sex offenders is to impose on them civil commitment through "sexually violent predator" (SVP) laws.¹¹² Under this approach, sex offenders are confined to a treatment facility, typically following the completion of their prison term, based on a finding that "because of a mental abnormality or personality disorder, [the person] finds it difficult to control his predatory behavior, which makes him likely to engage in sexually violent acts."¹¹³ "Mental abnormality" or "personality disorder" is frequently defined to mean "a congenital or acquired condition that affects a person's emotional or volitional capacity and renders the person so likely to commit sexually violent offenses that he constitutes a menace to the health and safety of others."¹¹⁴ This approach employs the civil, rather than the criminal, process and allows a person to be involuntarily hospitalized if, following a hearing, that person is found to pose a risk of self-harm or harm to others.¹¹⁵ This approach permits the state to confine the

person until he or she no longer poses a danger to society.¹¹⁶

In *Kansas v. Hendricks*, the United States Supreme Court upheld a Kansas statute that allowed the involuntary civil commitment of a sex offender who, due to a "mental abnormality or personality disorder," is likely to engage in "predatory acts of sexual violence."¹¹⁷ In *Hendricks*, the respondent was a convicted sex offender whose pedophilia was considered to constitute the requisite "mental abnormality."¹¹⁸

Five years later, the Court issued a second ruling that clarified that *Hendricks* does not require that the state prove that sex offenders are completely incapable of controlling themselves before the state may commit them.¹¹⁹ In *Kansas v. Crane*, the Court established that the state is only required to prove that it would be "difficult" for the person to control his or her dangerous behavior as a predicate to civil commitment.¹²⁰

As of 2006, nineteen states had civil commitment statutes for certain sex offenders.¹²¹ After an initial rapid proliferation of such laws, enthusiasm for additional enactments has waned. In the decade of the 1990s, fifteen state programs were passed; since 2000, only four states have enacted such programs. Reasons for this vary, but prohibitive cost, lack of ability to control costs, better alternative uses of funds and resources, lack of release back into the community resulting in an ever increasing number of

outweighed by the state's compelling interest in protecting public safety (citing *Paul P. v. Farmer*, 227 F.3d 98, 107 (3d Cir. 2000))).

¹¹¹ *Doe v. Moore*, 410 F.3d 1337, 1346-49 (11th Cir. 2005), *cert. denied*, 126 S. Ct. 624 (2005) (finding no equal protection violation).

¹¹² See JOHN Q. LA FOND, PREVENTING SEXUAL VIOLENCE: HOW SOCIETY SHOULD COPE WITH SEX OFFENDERS 128 (2005).

¹¹³ VA. CODE ANN. § 37.2-900 (2006).

¹¹⁴ *Id.*

¹¹⁵ ANDREW J. HARRIS, CIVIL COMMITMENT OF SEXUAL PREDATORS: A STUDY IN POLICY IMPLEMENTATION xiii (2005); John Kirwin, *One Arrow in the Quiver—Using Civil Commitment as One Component of a State's Response to Sexual Violence*, 29 WM. MITCHELL L. REV. 1135, 1137 (2003).

¹¹⁶ See, e.g., FLA. STAT. § 394.917(2) (2005).

¹¹⁷ *Kansas v. Hendricks*, 521 U.S. 346, 350 (1997) (quoting KAN. STAT. ANN. § 59-29a01 (1994)). The phrase "predatory acts of sexual violence" has since been replaced with "repeat acts of sexual violence." KAN. STAT. ANN. § 59-29a01 (2005).

¹¹⁸ *Kansas v. Hendricks*, 521 U.S. at 360.

¹¹⁹ *Kansas v. Crane*, 534 U.S. 407, 411 (2002).

¹²⁰ *Id.* at 411.

¹²¹ Susan Broderick, *Innovative Legislative Strategies for Dealing with Sexual Offenders*, 18(10) AMERICAN PROSECUTORS RESEARCH INSTITUTE UPDATE 1 (2006), http://www.ndaa-apri.org/publications/newsletters/update_vol_18_number_10_2006.pdf.

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[2] Zimring, F.E. (2004). An American Travesty. University of Chicago Press.

[3] Freeman-Longo, R.E. (2000). Pg. 9. Revisiting Megan's Law and Sex Offender Registration: Prevention or Problem. American Probation and Parole Association.
<<http://www.appa-net.org/revisitingmegan.pdf>

[4] Garfinkle, E., Comment, 2003. Coming of Age in America: The Misapplication of Sex-Offender Registration and Community Notification Laws to Juveniles. 91 California Law Review 163.

[5] Ibid.

[6] This past June, Connecticut raised the age of original juvenile court jurisdiction to age 17.